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Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

(TWO BRIEFINGS)

WHEN: November 21 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Proclamation 6752 of October 28, 1994

The Year of Gospel Music, 1994

By the President of the United States of America

A Proclamation

Born in the soul of America's churches, Gospel music is an integral part of liturgy and spirituality in parishes from Atlanta to Dallas, Detroit to Baton Rouge, the heart of New York City to the smallest hamlets of our country. It is a music of the people, one that has provided hope and inspiration for generations of Americans.

Gospel music has come to influence singers and composers of all popular forms, including jazz, the blues, and soul music. The rhythm and expressiveness—the very feeling—has become an important part of our culture and a vital part of our heritage.

Our Nation owes a great debt of gratitude to those who preserve and bring to life Gospel music in our churches, in recordings, in concerts, and through the media. It is in our national interest to promote and support Gospel music so that generations to come may enjoy and appreciate it. In so doing, we will gain a greater understanding of the breadth and vitality of the human spirit and its indomitable faith as it is expressed through the beauty of song.

The Congress, by Senate Joint Resolution 157, has designated the year of 1994 as "The Year of Gospel Music" and has authorized and requested the President to issue a proclamation in observance of this year.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the year of 1994 as The Year of Gospel Music. I urge all Americans to celebrate Gospel music with appropriate ceremonies and activities and to reflect on the role that this music has in reinvigorating and renewing our souls and our communities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-27182
Filed 10-28-94; 1:40 pm]
Billing code 3195-01-P

Presidential Documents

Memorandum of October 27, 1994

Delegation of Authority

Memorandum for the Secretary of Defense

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of Defense, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 27, 1994.

[FR Doc. 94-27224
Filed 10-28-94; 4:26 pm]
Billing code 5000-04-P

Rules and Regulations

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Deregulation of "Organizing a Federal Credit Union", "Standard Form of Bylaws", "Amendment of Bylaws and Charters"

CFR Correction

In Title 12 of the Code of Federal Regulations, parts 600 to end, revised as of January 1, 1994, on pages 273 and 274, §§ 701.3 and 701.4 are removed.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-CE-27-AD; Amendment 39-8991; AD 94-06-02]

Airworthiness Directives; Luscombe Model 8 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 94-16-02 concerning Luscombe Model 8 series airplanes, which was published in the **Federal Register** on August 11, 1994 (59 FR 41237). That publication inadvertently referenced the existing vertical stabilizer forward attach fittings as aluminum. Two of the three possible existing fittings are aluminum, but one is made of steel. This action changes the AD by deleting reference to aluminum.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Lirio Liu, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806; telephone (310) 988-5229; facsimile (310) 988-5210.

SUPPLEMENTARY INFORMATION: On August 11,1994, the Federal Aviation Administration (FAA) issued AD 94-16-02, Amendment 39-8991 (59 FR 41237), which applies to Luscombe Model 8 series airplanes that have round-tipped vertical stabilizer installations. This AD supersedes AD 79-25-05, Amendment 39-3630, with a new AD that requires replacing the existing vertical stabilizer forward attach fitting, part number (P/N) 28415, P/N 28444, or P/N 28453, with either Luscombe P/N 28455 manufactured by the Don Luscombe Aviation History Foundation (DLAHF); a welded steel fitting manufactured by the Univair Aircraft Corporation, P/N U28444; or an FAA-approved equivalent part.

The AD inadvertently references the existing part numbers as aluminum. Two of the three possible existing fittings are aluminum, but one is made of steel. This action changes the AD by deleting reference to aluminum.

Need for Correction

As published, the final regulations have incorrectly referenced the existing part number vertical stabilizer fittings as aluminum fittings; when in actuality two of the three possible fittings are aluminum and the other is steel. The way the final regulations are currently written could cause confusion when locating the existing vertical stabilizer fitting to accomplish the required replacement.

Correction of Publication

Accordingly, the publication of August 11, 1994 (59 FR 41237) of Amendment 39-8991; AD 94-16-02, which was the subject of FR Doc. 94-18841, is corrected as follows:

On page 41237, in the first column, in line 4 of the "SUMMARY:" section, delete the word "aluminum".

On page 41237, in the second column, in line 10 of the "SUPPLEMENTARY INFORMATION" section, delete the word "aluminum".

On page 41237, in the third column, in the third line from the top of the page, delete the word "aluminum".

§ 39.13 [Corrected]

On page 41238, in the second column, in § 39.13, in line 1 of paragraph (a) of AD 94-16-02, delete the word "aluminum".

Issued in Kansas City, Missouri, on October 26, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-26977 Filed 10-31-94; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Animal Drugs, Feeds, and Related Products; Ceftiofur

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. The supplemental NADA provides for use of ceftiofur sterile powder as an aqueous injectable for dogs for treatment of canine urinary tract infections associated with *Escherichia coli* and *Proteus mirabilis*.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Charles W. Francis, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1617.

SUPPLEMENTARY INFORMATION: The Upjohn Co. Kalamazoo, MI 49001, filed supplemental NADA 140-338, which provides for use of Naxcel® Sterile Powder (ceftiofur sodium) reconstituted as a 50 milligrams per milliliter (mg/mL) injectable solution for treating dogs for urinary tract infections associated with *Escherichia coli* and *Proteus mirabilis*. The product is currently approved for use in cattle, swine, horses, and day-old chicks. The supplemental NADA is approved as of October 4, 1994, and the regulations in 21 CFR 522.313 are amended by adding new paragraph (d)(5) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21

CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning October 4, 1994, because the supplemental application contains reports of new clinical or field investigations, other than bioequivalence or residue studies, essential to the approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.313 is amended by adding new paragraph (d)(5) to read as follows:

§ 522.313 Ceftiofur sterile powder for injection.

* * * * *

(d) * * *

(5) *Dogs—(i) Amount.* 1.0 milligrams per pound (2.2 milligrams per kilogram) of body weight.

(ii) *Indications for use.* Treatment of canine urinary tract infections associated with *Escherichia coli* and *Proteus mirabilis.*

(iii) *Limitations.* For subcutaneous use only. Treatment should be repeated at 24-hour intervals, continued for 48 hours after clinical signs have disappeared, for 5 to 14 days. Do not use in animals found to be hypersensitive to the drug. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: October 25, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–27069 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Triple "F", Inc., to A. L. Laboratories, Inc.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Triple "F", Inc., 10104 Douglas Ave., Des Moines, IA 50322, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA 133–334 (Virginiamycin) to A. L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024. Accordingly, the agency is amending the regulations in 21 CFR 558.635(b)(2) to reflect the change of sponsor.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS.

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.635 [Amended]

2. Section 558.635 *Virginiamycin* is amended in paragraph (b)(2) by removing "011490" and adding in its place "046573".

Dated: October 24, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–27068 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–94–051]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the regulations governing the operation of the Hillsboro Boulevard (SR 810) drawbridge, mile 1050.0 at Deerfield Beach, Florida, by permitting the draw to remain closed for a longer period of time during the winter season. This modification is being made to relieve highway congestion created by bridge openings while still meeting the reasonable needs of navigation.

EFFECTIVE DATE: December 1, 1994.

FOR FURTHER INFORMATION CONTACT: Brodie Rich, Project Manager, Bridge Section at (305) 536–5117.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Brodie Rich, Project Manager, and LT. J.M. Losego, Project Counsel.

Regulatory History

On June 7, 1994, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (59 FR 29406). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal, except that from October 1 through May 31, from 7 a.m. to 6 p.m., the draw opens only on the hour, quarter-hour, half-hour and three-quarter hour. The Mayor of Deerfield Beach requested that the Coast Guard change the operating regulations to provide for hour and half-hour

drawbridge openings. The bridge owner (Florida Department of Transportation) recommended a change to a 20-minute opening schedule during the season to reduce traffic delays.

A Coast Guard analysis of highway traffic and bridge opening data provided by the bridge owner and four on-site investigations of the waterway holding conditions and local traffic patterns which were concluded on May 5, 1994, established that the highway traffic levels for this four-laned roadway and the frequency of bridge openings did not justify the proposed hour/half-hour opening schedule. However, in order to reduce drawbridge openings and periodic traffic congestion during the tourist season, a 20-minute opening schedule appears to be warranted.

Discussion of Comments and Changes

We received no comments in response to our public notice. Our investigation convinces us that vessels can find a safe a holding position in the vicinity of the bridge so the 20 minute schedule will not unreasonably interfere with safe navigation. The Final rule is unchanged from the Notice of Proposed Rulemaking.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT (44 FR 11040; February 26, 1979) is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Samll Business Act (15 U.S.C. 632).

Since tugs with tows are exempt from this rule, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.b.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by revising paragraph (bb) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway, FL.

* * * * *

(bb) *Hillsboro Boulevard drawbridge (SR 810), mile 1050.0, at Deerfield Beach.* The draw shall open on signal; except that from October 1 to May 31, from 7 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: October 13, 1994.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 94–27044 Filed 10–31–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 168

[CGD 91–202]

RIN: 2115–AE10

Escort Vessels for Certain Tankers; Partial Suspension of Effectiveness

AGENCY: Coast Guard, DOT.

ACTION: Final rule; partial suspension of regulation with request for comments.

SUMMARY: On August 19, 1994 the Coast Guard published a Final Rule (59 FR 42962) requiring escorting of certain tankers in Prince William Sound, Alaska and Puget Sound, Washington. The regulations are scheduled to go into effect on November 17, 1994. However, concerns have been expressed to the Coast Guard that one of the requirements (the crash-stop criteria) may not be achievable without putting the escort vessels, and their crews, at serious risk. Because it is not possible to resolve this issue prior to the November 17th effective date, the Coast Guard is suspending the effective date of that particular criteria until there has been an opportunity for more-detailed studies to be conducted and publicly reviewed.

EFFECTIVE DATE: 33 CFR 168.50(b)(2) scheduled to become effective on November 17, 1994, in the final rule published at 59 FR 42962, August 19, 1994, is suspended as of November 17, 1994.

Comments: Comments must be received on or before January 30, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–202), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Jordan, Project Manager, (202) 267–6751 or fax (202) 267–4624.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Thomas Jordan, Project Manager, Oil Pollution Act (OPA 90) Staff, and Pam Pelcovits, Project Counsel, Oil Pollution Act (OPA 90) Staff.

Regulatory History

The regulatory history for this rulemaking is recounted in the preamble of the final rule entitled "Escort Vessels for Certain Tankers" (59 FR 42962, August 19, 1994).

Discussion of Federal Escort Regulations

This discussion is intended to complement, and further clarify, the escort regulations published in the final rule on August 19, 1994 (59 FR 42962).

The final rule created 33 CFR part 168 which, in addition to other provisions, included operational and performance requirements for tankers and escort vessels.

The operational requirement of § 168.50(a)(3) requires that the tanker must not exceed the speed beyond which the escort vessels can reasonably be expected to safely bring the tanker under control within the navigational limits of the waterway, taking into consideration ambient sea and weather conditions, surrounding vessel traffic, etc. It requires the tanker to be operated within the performance envelope of its escorts, relative to the limits of the waterway and in consideration of the transit conditions (wind and sea). Thus, this requirement is both waterway-specific and transit condition-specific. In general, the fouler the weather, the higher the required performance envelope for the escort vessels.

When developing the escort regulations, the Coast Guard expected that this operational requirement would govern most escort vessel selections. However, under extremely benign transit conditions a relatively low-performance escort could be selected. Although such an escort might meet the operational requirement, the Coast Guard was concerned that there would be no margin in the event that transit conditions deteriorated unexpectedly. (In such circumstances, it would be incumbent upon the tanker master to order more escorts; however, there might still be a significant time delay before the escorts could actually rendevous with the tanker. In the meantime, the tanker would be left with an inadequate escort).

Therefore, the Coast Guard decided that additional criteria were necessary to set a minimum performance level for the escort vessels, regardless of how benign the transit conditions might be. Accordingly, § 168.50(b) established five minimum performance criteria for the escort vessels:

—the ability to tow the tanker at a speed of 4 knots in calm conditions (§ 168.50(b)(1));
—the ability to hold the tanker steady against a 45-knot headwind (also in § 168.50(b)(1));
—the ability to stop the tanker within the same distance that it could crash-stop itself from a speed of 6 knots using its own propulsion system (§ 168.50(b)(2));
—the ability to hold the tanker on a steady course against a 35-degree locked rudder (§ 168.50(b)(3)); and
—the ability to turn the tanker 90 degrees, assuming a free-swinging rudder and a speed of 6 knots, within the same distance (advance and transfer) that it could turn itself with a hard-over rudder (§ 168.50(b)(4)).

These criteria are not waterway-specific. The Coast Guard determined that it was appropriate that the escort vessels should have the capability of bringing the tanker under control within some specified parameters, regardless of how much sea room might be available. However, as previously mentioned these criteria are only intended to set a minimum performance requirement. Except in relatively benign transit conditions, it is not expected nor necessary that these criteria be more stringent than the operational requirement of § 168.50(a)(3).

These criteria are based upon the conceptual approach that the escort vessels should have abilities equivalent to the tanker's ability to control itself at a speed of 6 knots. Similar minimum requirements could have been specified in other ways, such as in units of the tanker's shiplength or some percentage of its deadweight tonnage. However, each of these alternative methods had shortcomings.

The performance criteria are not intended to dictate a particular response tactic. The Coast Guard recognizes that at certain points in the waterway a steering response may be the appropriate tactic whereas at other points a towing response might be the appropriate tactic. The performance criteria are only intended to ensure that both tactics can be performed at a minimum level.

Reason for Suspension of Effectiveness

Immediately after the final rule was published, several tanker operators contracted the Glosten Associates (Glosten) of Seattle, WA to perform calculations comparing the maneuvering and control characteristics of various tankers and escort vessels (both conventional and tractor tugs). Glosten was the primary contractor conducting the Disabled Tanker Towing Study for Prince William Sound, and is currently conducting a similar study for San Francisco Bay. Glosten had also done a similar study for Puget Sound.

The preliminary Glosten findings indicated that, in order to meet the crash-stop criteria, three to four conventional tugs would typically be required to create a retarding force equal to a tanker's reversed propulsion power. This is particularly the case for diesel-powered tankers, which have superior reversing power compared to steam-powered tankers. However, industry's concern was that it is not safe to attach more than two tugs to a tanker in a retarding configuration. Therefore, the crash-stop criteria was not achievable without endangering the escort vessels and crews.

Representatives of the tanker operators met with the Coast Guard on September 23, 1994, to raise this issue, and requested a second, more formal opportunity to present their calculations. A report on that first meeting has been placed in the docket (CGD 91–202, file no. 108).

The second meeting took place on October 7, 1994, at Coast Guard Headquarters. Although there was insufficient time to publish a notice of public hearing, the Coast Guard was able to contact several other interest groups who attended. The second meeting was recorded and transcribed; copies of the tape and transcript have been placed in the docket (CGD 91–202, files no. 110 and 111, respectively).

At the second meeting, the Glosten findings were presented and discussed. However, detailed calculations, in a form suitable for submittal, were still being developed and were not yet ready by that date.

On the basis of the preliminary Glosten findings, the Coast Guard agrees that the crash-stop criteria should be revisited. However, recognizing that there will not be adequate opportunity for resolution of this issue before the November 17, 1994, effective date, the Coast Guard has decided to suspend the crash-stop criteria from going into effect until both the Coast Guard and the public have an opportunity to review the technical submittal. All other provisions of the final rule, however, will still go into effect on November 17, 1994.

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments on the crash-stop criteria or other aspects of the final rule. The Coast Guard particularly seeks comments on the minimum performance criteria, either those as published or alternatives that could achieve the same purpose.

Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–202) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

At this time, the final Glosten technical submittal has not yet been received by the Coast Guard. Persons wishing to receive a copy of the submittal in order to comment on it should submit their mailing address to the project manager, Mr. Thomas Jordan, who will distribute copies of this submittal following its receipt by the Coast Guard (see the **FOR FURTHER INFORMATION CONTACT** section of this notice).

The Coast Guard will consider all comments received during the comment period. It may change this action in view of the comments.

Dated: October 26, 1994.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–27047 Filed 10–31–94; 8:45 am]

BILLING CODE 4910–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 37–1–6592a; FRL–5086–9]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Arizona State Implementation Plan (SIP). The revised rule controls emissions of volatile organic compounds (VOCs) from the transfer of gasoline into motor vehicle fuel tanks. The revision applies to the Phoenix nonattainment area and this approval action will incorporate the regulation into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on this rule serves as a final determination that the finding of nonsubmittal for this rule has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of these revisions into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on January 3, 1995, unless adverse or critical comments are received by December 1, 1994. If the effective date is delayed, a timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the regulation and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted regulation are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Arizona Department of Weights and Measures, 1951 West North Lane, Phoenix, AZ 85021.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Under section 182(b)(3), EPA was required to issue guidance as to the effectiveness of stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement.[1] In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the stage II statutory requirement and indicate what EPA believes a State submittal needs to include to meet that requirement.

The Phoenix area is designated nonattainment for ozone and classified as moderate. See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.300 through 81.437. Under section 182(b)(3) of the amended Act, Arizona was required to submit stage II vapor recovery rules for this area by November 15, 1992. An 18-month sanctions clock under section 179(a) of the CAA began on January 15, 1993 when EPA made a finding that the State failed to make a complete submittal. In addition, section 110(c) of the Act provides that EPA promulgate a FIP no later than two years after a finding under section 179(a). On May 27, 1994, the Arizona Department of Environmental Quality (ADEQ) submitted to EPA stage II vapor recovery rules that were adopted by the State on August 27, 1993. The mandatory sanctions clock was stopped on June 30, 1994 when EPA determined that the State had made a complete submittal. By this document, EPA is taking direct final action to approve this submittal. This final action will incorporate this regulation into the Federally approved SIP and stop the FIP clock. The EPA has reviewed the State submittal against the statutory requirements and for consistency with EPA guidance. A summary of EPA's analysis is provided below. In addition, a more detailed analysis of the State submittal is contained in a technical support document (TSD) which is available from the Region IX Office, listed above.

Applicability

Under section 182(b)(3), States were required by November 15, 1992 to adopt regulations requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. The amended Act specifies that these State rules must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the Act defines an ISBM. The State has adopted a general applicability requirement of 10,000 gallons of gasoline per month and has provided an applicability requirement of 50,000 gallons of gasoline per month for ISBM's.

As more fully discussed in EPA's Enforcement Guidance and the General

[1] These two documents are entitled "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA–450/3–91–022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

Preamble (57 FR 13514), the State has provided that the gallons of gasoline dispensed per month will be calculated as stringently as the average volume dispensed per month for the 2-year period prior to State adoption of the regulation. In addition, the State has specified that the stage II requirement apply to all gasoline dispensing facilities, including retail outlets and fleet fueling facilities.

Implementation of Stage II

The Act specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an ISBM, these times, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990; (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month; and (3) 2 years for all other facilities. Although the submitted regulation was not adopted until August 27, 1993, the State regulations meet the express timetables in the Act since emergency rules were in effect prior to this submittal and the State compliance dates were set with respect to the November 15, 1992 statutory deadline for adoption of stage II regulations.

Additional Program Requirements

Consistent with EPA's guidance, the State requires that stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using only systems approved by the California Air Resources Board (CARB). The State requires sources to verify proper installation and function of stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every year or upon major modification of a facility (i.e., 75 percent or more equipment change).

With respect to recordkeeping, the State has adopted those items recommended in EPA's guidance and specifies that sources subject to Stage II must make these documents available upon request: (1) A license or permit to install and operate a stage II system, (2) results of verification tests, (3) equipment maintenance and compliance file logs indicating compliance with manufacturer's specifications and requirements, (4) training certification files, and (5) inspection and compliance records issued by the State. In addition, the State requires facilities that are not subject to stage II to maintain files containing the gasoline throughput of the facility. The State has also established an inspection function consistent with that described in EPA's guidance. The State plans to conduct inspections of facilities including a visual inspection of the stage II equipment and of the required records and a functional test of the stage II equipment.

EPA Action

Because EPA believes that the State has adopted a stage II regulation in accordance with section 182(b)(3) of the Act, as interpreted in EPA's guidance, Arizona Administrative Code title 4, Chapter 31, Article 9 (R4–31–901 through R4–31–910) is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 182(b)(3) and 110(a) and part D. Therefore, if this direct final action is not withdrawn, on January 3, 1995, any FIP clock is stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 3, 1995, unless, by December 1, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 3, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the Arizona was approved by the Director of the Federal Register on July 1, 1982.

Date: September 23, 1994.

Felicia Marcus,

Regional Administrator.

Subpart D of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart D—Arizona

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.120 is amended by adding paragraphs (c)(69)(i)(A) to read as follows:

§ 52.120 Identification of Plan.

* * * * *

(c) * * *

(69) The following amendment to the plan was submitted by the Governor's designee on May 27, 1994.

(i) Incorporation by reference.

(A) Maricopa County Bureau of Air Pollution Control stage II vapor recovery program, adopted on August 27, 1993.

* * * * *

[FR Doc. 94–27075 Filed 10–31–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[TN–125–1–6395a; FRL–5095–6]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Knox County Operating Permit Regulations for Synthetic Minor Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Knox County portion of the Tennessee State Implementation Plan (SIP) to incorporate rules for the permitting of minor sources. On November 12, 1993, the State of Tennessee Division of Air Pollution Control (TDAPC) submitted a SIP revision on behalf of Knox County, fulfilling the requirements necessary to make Knox County's minor source operating permit program federally enforceable. The submittal conforms with the requirements necessary for a state's minor operating permit program to become federally enforceable.

DATES: This final rule is effective January 3, 1995 unless adverse or critical comments are received by December 1, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Yolanda Adams at the EPA Regional office listed below. Copies of the material submitted by Knox County, Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

Knox County Department of Air Pollution Control, City/County Building, Suite 459, 400 Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams at the above EPA Regional office. The telephone number is 404/347–2864.

SUPPLEMENTARY INFORMATION: On November 12, 1993, the State of Tennessee through the TDAPC submitted a SIP revision on behalf of Knox County designed to make Knox County's minor source operating permit program federally enforceable pursuant to EPA requirements as specified in a **Federal Register** document entitled "Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans" (See 54 FR 22274, June 28, 1989). This voluntary SIP revision allows EPA to enforce terms and conditions of state-issued minor source operating permits. In addition, operating permits that are issued under the state's minor source operating permit program that is approved into their SIP, may provide federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through federally enforceable operating permits can affect a source's applicability to federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and federal air toxics requirements mandated under section 112 of the Clean Air Act as amended in 1990 (CAA) for air toxics which are also Volatile Organic Compounds (VOCs) or Particulate Matter with a diameter of less than 10 micrometers (PM–10). Any existing source may limit its potential to emit, for purposes of avoiding title V requirements, up to one year after the effective date of the Knox County title V program. If, by that date, the source has not obtained a federally enforceable permit limiting its potential to emit under the applicability thresholds of title V, the source will need to submit a title V permit application. Otherwise, if it is later discovered that the source does not qualify for a minor source operating permit, the source may be subject to enforcement actions for failure to submit a title V permit application.

However, for limiting the potential to emit of air toxics, which are not also VOCs or PM–10, it is necessary for the State to make a submittal under 40 CFR part 63, subpart E, Approval of State Programs and Delegation of Federal Authorities. For other mechanisms that may be used to limit an air pollution source's potential to emit see the guidance document entitled "Limitation of Potential to Emit with Respect to title V Applicability Thresholds" dated September 18, 1992, from John Calcagni, Director of EPA's Air Quality Management Division, to William A. Spratlin, Director of EPA Region VII's Air and Toxics Division and the guidance document entitled "Approaches to Creating Federally-Enforceable Emissions Limits" dated November 3, 1993, from John S. Seitz, Director of EPA's Office of Air Quality and Planning Standards (OAQPS), to the Air Division Directors for Regions 1 through 10.

In the aforementioned June 28, 1989, **Federal Register** notice, EPA listed five criteria necessary to make a state's minor source operating permit program federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for federal enforceability by a verbatim incorporation of the criteria language listed in such notice.

Knox County agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permit.

With the addition of these provisions, Knox County's minor source operating permit program satisfies all the requirements listed in the June 28, 1989 **Federal Register** document. Therefore, EPA is approving this revision to the Knox County portion of Tennessee's SIP making the County's minor source operating permit program federally enforceable.

Final Action

In this action, EPA is approving the Knox County minor source operating permit program. The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 3, 1995 unless, by December 1, 1994, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule

based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 3, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: October 6, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(119) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(119) The minor source operating permit program for Knox County, submitted by the Tennessee Division of Air Pollution Control on November 12, 1993 as part of the Tennessee SIP.

(i) Incorporation by reference.

(A) Revisions to Regulations 17.4.E, 18.1.B, 19.1.B, 25.3.I., and 47.3.C. of the Knox County portion of the Tennessee SIP, as adopted by the Knox County Air Pollution Control Board on October 13, 1993.

(ii) Other material. None.

[FR Doc. 94–27073 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–6

[FPMR Amendment A–52]

RIN 3090–AE93

Fire Protection (Firesafety) Engineering

AGENCY: Public Buildings Service (PBS), GSA.

ACTION: Final rule.

SUMMARY: This regulation establishes a further definition of the term *equivalent level of safety*. The Federal Fire Safety Act of 1992 amended the Fire Prevention and Control Act of 1974 to require sprinklers or an *equivalent level of safety*, in certain types of Federal employee office buildings, Federal employee housing units, and federally assisted housing units. This rule identifies certain performance criteria which an alternative approach must satisfy in order to be judged equivalent. The criteria have been selected to provide the level of life safety prescribed in the Act.

EFFECTIVE DATE: October 26, 1994.

FOR FURTHER INFORMATION CONTACT: Director, Safety and Environmental Management Division (PMS), General Services Administration, 18th & F Streets NW., Washington, DC 20405, (202) 501–1464.

SUPPLEMENTARY INFORMATION:

1. General Requirements of the Act

The Fire Administration Authorization Act of 1992 (Public Law 102–522) was signed into law by the President on October 26, 1992. Section 106, Fire Safety Systems in Federally Assisted Buildings, of Title I—United States Fire Administration, is commonly referred to as the Federal Fire Safety Act of 1992. This section amends the Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) to require sprinklers or an *equivalent level of safety*, in certain types of Federal employee office buildings, Federal employee housing units, and federally assisted housing units. The Act's applicability and requirements are very complex.

They are summarized as follows:

In Federal employee office buildings with more than 25 Federal employees that are newly constructed, purchased, renovated, or leased (with the Government occupying 35,000 sq. ft. or more and some portion on or above the sixth floor):

- Buildings with 6 or more stories must have sprinklers (or an *equivalent level of safety*) throughout.
- All other buildings must have sprinklers (or an *equivalent level of safety*) in hazardous areas, as defined in National Fire Protection Association Standard 101, Life Safety Code®.

In Federal employee housing:

- New or rebuilt multifamily housing must have sprinklers (or an *equivalent level of safety*) throughout, and hard wired smoke detectors.
- All other housing requires hard wired smoke detectors on tenant change or no later than October 26, 1995

In federally assisted housing:

• New multifamily housing, 4 or more stories above ground level, must have sprinklers and hard wired smoke detectors.

• New multifamily housing in New York City, 4 or more stories above ground level, must have sprinklers (or an *equivalent level of safety*) and hard wired smoke detectors.

• Rebuilt multifamily property, 4 or more stories above ground level, must comply with the chapter on existing apartment buildings in National Fire Protection Association Standard 101, *Life Safety Code®*.

• All other housing must have hard wired or battery operated smoke detectors.

The requirements of the Act apply to all Federal agencies and all federally owned and leased buildings in the United States, except those under the control of the Resolution Trust Corporation.

In addition, there are a number of definitions associated with the Act. The major definitions are summarized below:

• *Federal Employee Office Building* means any building, owned or leased by the Federal Government, that can be expected to house at least 25 Federal employees in the course of their employment.

• *Renovated* means the repairing or reconstructing of 50 percent or more of the current value of a Federal employee office building, not including the land on which the Federal employee office building is located.

• *Multifamily property* means a residential building consisting of more than 2 residential units under one roof housing Federal employees or their dependents or a residential building consisting of more than 4 residential units under one roof housing other persons.

• *Rebuilding* means the repairing or reconstructing of portions of a multifamily property where the cost of the alterations is 70 percent or more of the replacement cost of the completed multifamily property, not including the land on which the Federal employee office building is located.

• *Housing assistance* means assistance provided by the Federal Government for housing, in the form of a grant, contract, loan, loan guarantee, cooperative agreement, interest subsidy, insurance, or direct appropriation; but does not include assistance provided by the Secretary of Veterans Affairs; the Federal Emergency Management Agency; the Secretary of Housing and Urban Development under the single family mortgage insurance programs under the National Housing Act or the homeownership assistance program under section 235 of such Act; the National Homeownership Trust; the Federal Deposit Insurance Corporation under the affordable housing program under section 40 of the Federal Deposit Insurance Act; or the Resolution Trust Corporation under the affordable housing program under section 21A(c) of the Federal Home Loan Bank Act.

• *Hazardous areas* means those areas in a building referred to as hazardous areas in National Fire Protection Association Standard 101, *Life Safety Code®*, or any successor standard.

• *Smoke detectors* means single or multiple station, self-contained alarm devices designed to respond to the presence of visible or invisible particles of combustion, installed in accordance with the National Fire Protection Association Standard 74 or any successor standard.

• *Automatic sprinkler system* means an electronically supervised, integrated system of piping to which sprinklers are attached in a systematic pattern, and which, when activated by heat from a fire:

(a) will protect human lives by discharging water over the fire area, in accordance with National Fire Protection Association Standard 13, 13D, or 13R, whichever is appropriate for the type of building and occupancy being protected, or any successor standard thereto; and

(b) includes an alarm signaling system with appropriate warning signals (to the extent such alarm systems and warning signals are required by Federal, State, or local laws or regulations) installed in accordance with the National Fire Protection Association Standard 72, or any successor standard.

A critical issue regarding implementation of the Act involves the definition and determination of an *equivalent level of safety*. The Act defines the term as an alternative design or system (which may include automatic sprinkler systems), based upon fire protection engineering analysis, which achieves a level of safety equal to or greater than that provided by automatic sprinkler systems.

The General Services Administration is required to issue regulations to further define the term *equivalent level of safety*. The Act specifies that, to the extent practicable, these regulations be based upon nationally recognized codes. In addition to describing the physical characteristics of an automatic sprinkler system, the Act sets a performance objective for the system. According to the definition, automatic sprinkler systems installed in compliance with the Act must *protect human lives*. This regulation, further defining the term *equivalent level of safety*, uses this performance objective to establish a quantifiable measure of the level of safety provided by sprinklers. In addition, a framework is presented for evaluating alternatives against the performance objective.

The Act did not address property protection or fire fighting. Thorough prefire planning, required by the Act, will allow firefighters to determine whether or not to enter a burning building solely to fight a fire. Therefore, the regulation does not directly address these issues either.

II. Objectives of the Legislation

Despite the widespread availability of affordable means of preventing fire losses, the United States continues to have one of the highest per capita fire death rates in the industrialized world. Fire is the fourth largest accidental killer in the United States, claiming at least 4,500 lives annually and injuring an additional 30,000 individuals. The fire vulnerability of office buildings and residential housing units can be reduced through strong fire safety measures. It is essential for the protection of life and property that effective technology be employed in detecting, containing and suppressing fires. When properly installed and maintained, automatic sprinklers and smoke detectors provide effective safeguards against loss of life and property from fire. According to the National Fire Protection Association (NFPA), there is no record of a multiple death fire (involving the loss of three or more people) in a completely sprinklered building where the system was properly operating, except in an explosion or flash fire or where industrial fire brigade members or employees were killed during fire suppression operations. The Federal Government, in addition to increasing the protection provided its own employees and individuals living in federally subsidized housing, can set an example in the area of fire safety and, by its own actions, encourage the private sector to use technology that has been proven to save lives.

The Federal Fire Safety Act of 1992 was created to serve as a model for local jurisdictions where the Congress believed not enough was being done to promote and provide for the fire safety of citizens. The evidence for the congressional concern is clear. According to National Fire Protection Association data, there are about 30,000 fire departments in the country, yet, according to the National Fire Sprinkler Association, only 7 states and 34 local

jurisdictions have sprinkler requirements that affect existing buildings. These ordinances have exclusions, applying to only specific occupancies. Most of them exclude residential occupancies, the occupancy where most fire deaths occur. The Federal Government chose to lead by example without imposing requirements on the states and local communities.

Congress recognized the need to have legislation that proactively addressed protection of life from fire. Throughout hearings on the Act, many groups testified that sprinklers were not the only system component necessary for firesafety in buildings. In addition, Congress did not want the legislation to inhibit the development of new technology. Therefore, the law does not simply mandate the installation of sprinklers. The law specifies certain life safety objectives to be achieved by the sprinkler systems. An equivalency clause was provided to allow for the use of alternatives which satisfied the identified life safety objectives.

III. Background

Use of automatic sprinklers may be the best, currently available approach to providing life safety. Sprinklers respond automatically to fire, limit fire size, and are also able to sound an alarm. In addition to enhancing life safety, sprinklers provide property protection and limit potential business interruption. Sprinklers can significantly reduce the hazards firefighters must face in combating a fire. The cost effectiveness of sprinklers for new construction cannot be overstated. Sprinkler protection can be added with minimal impact on overall project cost while significantly improving the level of firesafety. In recognition of the many benefits and relatively low cost of sprinkler protection, the General Services Administration has instituted a policy of providing sprinklers in its new construction projects.

The issue of providing sprinkler protection in existing buildings is not as clear cut. Typically, the cost of providing protection is higher in existing buildings. It may not be possible to provide complete sprinkler protection due to existing physical conditions or competing requirements (e.g., historic preservation laws). The decision to provide sprinkler protection must be part of an integrated fire protection strategy. Existing building systems and applicable requirements must be considered in developing the strategy. Most model codes provide an equivalency concept which allows for use of alternative approaches or systems. This concept is provided in recognition of the fact that compliance with one prescribed solution may not be the best alternative in every case.

These alternative systems, methods, or devices can achieve a reasonable level of protection and can then meet the intent of the specific code requirement. Alternative methods which might be considered include using fire-rated enclosing barriers, low flame spread interior finish materials, low heat release rate furnishings, and low ignition tendency materials. In evaluating alternatives, consideration needs to be given to the reliability of the proposed approach over the life of a structure. In addition, enforcement and maintenance practices will vary significantly depending on the use (office, residence, store, factory, etc.) of the facility.

The Federal Fire Safety Act of 1992 requires that the General Services Administration, in cooperation with the United States Fire Administration, the National Institute of Standards and Technology, and the Department of Defense, issue regulations further defining the term *equivalent level of safety*. In developing the regulations, GSA held meetings with a working group composed of representatives from the agencies named in the legislation and other affected Federal agencies. The Department of Veterans Affairs, the Social Security Administration, the Department of Housing and Urban Development, and the U.S. Coast Guard were invited to participate because of the Act's potential impact on their office space or housing.

The group met several times during 1993 and discussed several issues key to the development of a definition of an *equivalent level of safety*. Ultimately, the group agreed that sprinklers provide a unique combination of fire detection and suppression, and that no current system could be considered equivalent. However, other systems in various combinations could provide a level of safety, especially life safety, equivalent to that provided by complete sprinkler protection. The group determined that reaction time is the significant difference between the two occupancy groups (office and residential) addressed by the Act. Reaction time is especially important in analyzing equivalency in housing. An occupant's ability to react to a fire and evacuate from the area exposed to fire effects can be influenced by a number of factors including physical ability, mental status, age, available warning systems, and training.

The question of whether or not the regulation should have a height threshold, specifically should it not apply to high rise buildings, was the most difficult for the group to deal with and a consensus was never reached. The group was divided between two opposing points of view. One portion of the group believed that the firesafety problems inherent in high rise buildings could only be addressed through complete sprinkler protection, and the Act was intended to require sprinklers in high rise buildings. Therefore, the regulation should place a maximum height limit on the applicability of the *equivalent level of safety* provision. The opposing view held that no height threshold was necessary. In high rise buildings, fire fighting and egress will be more difficult. However, appropriate combinations of automatic detection, fire and smoke containment, egress facilities, and suppression could produce effective fire protection strategies in these buildings. An analysis, required as part of the *equivalent level of safety* regulation, could adequately address the firesafety problems associated with high rise buildings and lead to development of appropriate solutions.

Model codes support the use of equivalency concepts especially in existing buildings. The congressional intent for an equivalency option was reinforced by the passage of an amendment to the original legislation providing an equivalency option in federally assisted housing in New York City (Public Law 103–195). The legislation gives the General Services Administration the responsibility to develop the regulation defining an *equivalent level of safety*. GSA believes that the law is clear requiring high rise (6 or more stories) Federal employee office buildings to have sprinklers, or an *equivalent level of safety*. The regulation should not have specific thresholds.

IV. Summary of Proposed Rule

In order to evaluate whether or not a life safety equivalency has been achieved, the building systems must be defined, reasonable worst case scenarios developed, maximum probable loss estimated, time required for the space to become hazardous calculated, and time required for egress determined. A number of factors are critical in developing a life safety equivalency analysis. Rate of fire growth is controlled by the type and location of combustible items, the layout of the space, the materials used in construction of the rooms, openings and ventilation, and suppression capability. Detection time, occupant notification, occupant reaction time, occupant mobility, and means of egress are

important considerations in evaluating egress time.

The proposed regulation established a general measure of building firesafety performance. Building environmental conditions were specified to ensure the life safety of building occupants outside the room of fire origin. The specified environmental conditions would be applicable whether or not the evaluation is conducted for the entire building or for just the hazardous areas. In the latter case, the room of origin would be the hazardous area while any room could be a room of origin in the entire building scenario.

Sprinklers would provide the level of life safety prescribed in the Act by controlling the spread of fire and its effects beyond the room of origin. In order to provide an *equivalent level of safety*, alternative methods must allow sufficient time for occupants to reach areas of safety by limiting the spread of the fire and its effects. A typical room fire will not pose a hazard to the rest of the building until flashover. A functioning sprinkler system should activate prior to the onset of flashover. Smoldering fires can have significant life safety impact beyond the room of origin. However, a typical sprinkler system would not activate in response to a smoldering fire. Therefore, the sprinkler system would have little or no impact on life safety in the smoldering fire.

Flashover is a phenomenon that occurs in many building fires. In the initial (preflashover) stages, fire development is controlled by the amount, type, and location of combustible materials in the area and the speed with which it spreads. As the fire develops, however, the hot smoke and fire gases accumulate at the ceiling, heating all of the unignited materials in the room. The hot ceiling gases radiate energy onto the burning fuel causing it to burn faster. As the fire grows, the available air cannot support the combustion of all of the fuel that is produced. The unburned fuel collects in the smoke layer; the smoke normally blackens at this time. When this combination of events reaches a temperature of about 550 to 600 °C (1000 to 1100 °F), the radiant heat from the hot gas layer will quickly ignite all of the exposed combustible material. Frequently any combustible gases accumulated in the smoke layer will find air and burn out at this time. When this rapid ignition of combustible material or gases occurs, the fire often violently erupts from the room of origin spreading flame, hot fuel laden gases, and toxic smoke into adjacent spaces. This transition is called flashover, and a fire that has undergone this transition is called a flashed over fire.

The proposed regulation established three endpoint criteria designed to achieve the level of life safety prescribed in the Act. To be equivalent, an office building or housing unit must be designed, constructed, and maintained to prevent flashover in the room of fire origin, limit fire size to no more than 1 megawatt (950 Btu/sec), or prevent flames from leaving the room of origin. For the purposes of this regulation, flashover is intended to describe a fire in which the upper layer temperature in a room reaches approximately 600 °C (1100 °F) and the heat flux at floor level exceeds 20 kW/m^2 (1.8 Btu/ft^2/sec). As with the prevent flashover criteria, the limitation on maximum heat release rate and the requirement to keep flames within the room of fire origin are designed to limit the size of the fire.

A 1 megawatt fire is approximately equivalent to a single burning easy chair or two burning 1.8 m (6 ft) tall Christmas trees. In a 3.6 m (12 ft) by 4.6 m (15 ft) gypsum board lined room with a 1.4 m (4 ft) wide open doorway, a fire growing proportionally with time will produce an upper gas temperature of 425 to 480 °C (800 to 900 °F) in 300 seconds. The fire heat release rate at 300 seconds would be approximately 1 megawatt assuming a medium growth rate t-squared fire as referenced in Appendix B of the National Fire Protection Association Standard 72, National Fire Alarm Code. This fire is about the largest that can occur in such a room without a substantial likelihood of flames discharging out the room doorway.

The person conducting a life safety equivalency analysis must be familiar with fire dynamics, building construction, hazard assessment, and human behavior in a crisis. The proposed regulation established minimum qualifications for the people expected to conduct the required analyzes. In addition, the regulation specified the Federal Government official responsible for reviewing and accepting *equivalent level of safety* analyses.

The proposed rule did not address the life safety impact of a smoldering fire. Smoldering fires can represent a significant life safety hazard, however, typical sprinkler systems will not control this hazard. In addition, it did not attempt to provide guidance in determining acceptable levels of protection against property loss or business interruption.

V. Discussion of Comments

GSA published the proposed rule in the **Federal Register** (Vol. 59, No. 99, pp. 26768–26772) for public comment on May 24, 1994. On June 30, 1994, a notice of extension of the public comment period was published in the **Federal Register** (Vol. 59, No. 125, pg. 33724). The public had until July 25, 1994, to comment on the proposed rule.

In response to the proposed rule and subsequent extension, a total of 46 items of correspondence were received. Of these, 14 were from state fire marshals, 10 were from professional or trade associations, 7 were from Federal Government entities, 3 were from private fire protection engineering consultants, 1 was from academia, and 11 were from private citizens. The comments ranged from general support or opposition to the concept of an *equivalent level of safety* to very specific comments related to technical details of the regulation. A summary of the comments, and our responses to them, follow.

A. Intent of Legislation

Comment: Several commenters indicated that defining an *equivalent level of safety* would provide a means to avoid the intent of the Act.

Response: As indicated in House Report 102–509, Part 1, the purpose of the Federal Fire Safety Act of 1992 was to set an example for State and local governments by mandating firesafety requirements for new or renovated Federal office space and certain categories of federally assisted housing. By prohibiting Federal funding for these buildings, the Act promotes the use of automatic sprinklers, or an *equivalent level of safety*. The Act defines the term *equivalent level of safety* as an alternative design or system (which may include sprinkler systems), based upon fire protection engineering analysis, which achieves a level of safety equal to or greater than that provided by automatic sprinkler systems. The Congress had a number of expectations concerning the definition. The alternative would provide flexibility in instances where fire protection engineering analyses demonstrated that other means would yield the same level of life safety as that provided in a fully sprinklered building. In many situations, there would be no effective *equivalent level of safety* in comparison to the life safety protection afforded by a building conforming with the requirements of current building design criteria for a fully sprinklered building. In addition, several factors were to be considered in further defining

equivalent level of safety: the provisions of nationally recognized model codes and the firesafety guidelines followed by the General Services Administration for sprinklered buildings; analyses of potential fire loss exposures and adverse conditions related to the firesafety of a building, and analyses of safety alternatives for a building; and current technical research, including the study "on the use, in combination, of fire detection, fire suppression systems, and compartmentation," of the National Institute of Standards and Technology. The intent of the Act is very clear in requiring an *equivalent level of safety* option for all situations.

Comment: A number of commenters wanted sprinklers to be the only option.

Response: It should not be taken lightly that this legislation originated in the House Committee on Science, Space, and Technology and that one intent of the Act (as specifically articulated in the report language) was to encourage the development and use of new technology. The Congress recognized that the intent of the Act could not be met by specifying only one type of currently available fire technology. The concept of *equivalent level of safety* has and will continue to promote the development of new firesafety technologies. Providing for an *equivalent level of safety* is in keeping with equivalent clauses contained in the model building and fire codes. For example, section 1–5.1 of National Fire Protection Association Standard No. 101®, Life Safety Code®, states

> Nothing in this Code is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety as alternatives to those prescribed by this Code, provided technical documentation is submitted to the authority having jurisdiction to demonstrate equivalency, and the system, method, or device is approved for the intended purpose.

The regulation provides a means for demonstrating equivalency based on a technical evaluation.

Comment: A few Federal agencies indicated that defining an *equivalent level of safety* could jeopardize their automatic sprinkler system installation programs.

Response: The public law sets a standard. This regulation provides a means to achieve the standard while maintaining a degree of flexibility. Use of this *equivalent level of safety* option is not mandatory. As outlined in this regulation, there are numerous reasons for installing automatic sprinkler systems in buildings. These reasons cover issues well beyond the very limited scope of this regulation. Full compliance with the sprinkler requirements contained in the Federal Fire Safety Act will be the easiest solution, especially when Federal agencies lack the fire protection engineering expertise to evaluate an equivalency.

B. Scope of the Regulation

Comment: A number of comments reflected confusion concerning the scope of the regulation.

Response: This regulation is intended solely to define an *equivalent level of safety* appropriate for judging compliance with the requirements of the Federal Fire Safety Act of 1992. It does not necessarily apply to the evaluation of equivalency to other building and fire code requirements. In order to address this issue, the scope of the regulation has been refined and clarified.

Comment: Several commenters expressed concerned over the decision to exclude firefighter safety from the regulation especially when rescue of building occupants is required.

Response: The concept presented in the proposed regulation was not intended to totally exclude consideration of firefighter safety. The need for the fire department to conduct rescue operations must be considered in an *equivalent level of safety* analysis. If rescue operations are expected, then the firefighters conducting them must be protected. Firefighter safety is not considered from the standpoint of them entering a building solely to fight a fire and limit property loss.

Comment: A few commenters questioned the impact of the proposed rule on local codes.

Response: Legally, buildings built on Federal property are exempt from local building codes. In the case of buildings developed on private land to be leased by the Federal Government, the applicable local codes govern. Public Law 100–678 requires, among other things, that Federal agencies comply "to the maximum extent feasible" with "one of the nationally recognized model building codes and with other applicable nationally recognized codes" when constructing or altering Federal buildings. This law also directs agencies to comply with State and local zoning laws to submit plans for buildings being altered or constructed to State or local officials for review prior to construction, and to permit local officials to inspect Federal buildings while under construction or alteration. However, the law places limitations on the obligations of Federal agencies; for example, agencies can limit the time local officials have for plans review to 30 days, are not required to follow the recommendations of local officials, and are not allowed to pay any fees or fines to local governments. The impact of the Federal Fire Safety Act will primarily be an additional requirement with which Federal buildings, both owned and leased, will have to comply. However, firesafety protection measures required in order to comply with local codes or other requirements can and should be considered in assessing the existence of an *equivalent level of safety*.

Comment: Some commenters questioned the applicability of existing equivalency clauses in currently available consensus standards and their relationship to the proposed rule.

Response: Equivalency as described in national standards requires approval by an authority having jurisdiction. No specific performance measures are provided for making the judgment as to the level of equivalency, leading to non-uniform application and acceptance. The rule provides a performance definition, as required by the law. It is possible the philosophy outlined in the proposed rule could form the basis for further development and adoption of performance-based equivalency measures in the national consensus codes.

C. Technical Issues

Comment: Several commenters recommended the establishment of a threshold height limit above which only total sprinkler protection would be acceptable. However, other commenters indicated that the height issue could be addressed in the required engineering analysis.

Respose: The objective was not to rewrite the law. The Act requires that the General Services Administration further define the term *equivalent level of safety*. By specifying a maximum height threshold, the equivalency option specifically intended by Congress would be eliminated without their consent. The intent of Congress to provide an equivalency option without height limitations is further evidenced by the addition of an equivalency option after the bill had been passed (Public Law 103–195).

Comment: A number of comments were received concerning whether or not meeting one or all of the selected equivalency criteria was sufficient. These commenters recommended replacing the word *or* in the phrase "prevent flashover in the room of origin, limit fire size to no more than 1 megawatt (950 Btu/sec), or prevent flames from leaving the room of origin" with the word *and*.

Response: The word *or* was chosen specifically in preference to *and*. The

intent of this statement was that the condition or conditions producing the most hazardous exposure to building occupants be selected for measuring equivalency. For example, it could be concluded that an acceptable level of safety had been achieved if flames did not extend beyond the room of origin. If flashover or the 1 MW fire represented a more severe hazard to building occupants, this conclusion would not be valid.

Comment: Many commenters raised issues associated with the definition of the *room of origin*, specifically raising concerns related to establishing an appropriate size. Is it appropriate to use a closet as the *room of origin*? What would the *room of origin* be in an area with open plan space?

Response: The concept of *room of origin* was deliberately left open to encourage comments. Based on comments received, the definition of *room of origin* is being refined to include a maximum area limitation of 200 m^2 (2000 $ft.^2$). Fires involving areas greater than 200 m^2 pose substantial difficulties for firefighters and threaten occupants, especially those located on upper levels of high-rise structures. Exit paths are easily jeopardized by fires involving 200 or more square meters of floor area. In order to provide equivalent life safety, especially in high-rise structures, no fire area should be permitted to exceed 200 m^2. Fire separations or other protective measures should be provided to limit potential fire areas.

Comment: A few commenters questioned the use of flashover as an endpoint criteria.

Response: Flashover was selected as an endpoint for two reasons. First, the potential for flashover can have a significant impact on required notification time. Prior to flashover, a fire represents a hazard primarily to occupants in the room of origin. The energy released by the fire is insufficient to "drive" significant quantities of products of combustion beyond the room of origin. Any smoke that leaves is low temperature and contains minimal amounts of toxic gases. Based on a series of fire tests in mobile homes, researchers at the National Bureau of Standards (now the National Institute of Standards and Technology) concluded "Limiting conditions adverse to life safety are likely to be reached in the living room at the end of the mobile home remote from the bedroom where the fire started at approximately the same time that flashover occurs in the bedroom. Limiting levels of carbon monoxide and oxygen are less likely to be reached in the living room if flashover does not occur in the bedroom."(Budnick, E.K., Klein, D.P., and O'Laughlin, R.J., "Mobile Home Bedroom Fire Studies: The Role of Interior Finish," NBSIR 78–1531, National Bureau of Standards Center for Fire Research, September 1978.) Occupants in the room of origin should be able to detect a fire and leave prior to flashover. If flashover is expected, the use of sophisticated fire alarm systems will be required to provide sufficient egress time for building occupants outside the room of origin.

A second reason for flashover as an endpoint is its use as a firesafety performance objective in the national consensus standards. Two of the three sprinkler installation standards referenced in the Federal Fire Safety Act use flashover as an objective. These two standards (NFPA 13D and 13R) indicate that a sprinkler system "installed in accordance with this standard is expected to prevent flashover (total involvement) in the room of fire origin, where sprinklered, and to improve the chance for occupants to escape or be evacuated." The third standard (NFPA 13) simply states that its objective is "to provide a reasonable degree of protection for life and property from fire." Currently, compliance with the specifications contained in the standard is the only way to judge whether or not the proposed performance objective has been achieved. Several large loss fires have indicated that complying with the requirements in the standard may not always adequately protect the specific hazard and ensure attainment of the firesafety objective. In recognition of this, the NFPA has recently formed a group, composed of members of the sprinkler installation standard committee, to develop a fully performance oriented sprinkler installation standard. In addition, the NFPA has established a project, under the Committee on Hazard and Risk of Contents and Furnishings, to develop a document on prevention of flashover titled Guide on Methods for Decreasing the Probability of Flashover.

Comment: A number of commenters questioned the definition of *reasonable worst case scenario* and several provided recommendations for improving the definition.

Response: The *reasonable worst case scenario* definition was not intended to be an all inclusive listing of things to be considered in conducting an equivalency analysis. Based on comments received, the definition is being expanded to identify additional items which should be considered in establishing *reasonable worst case scenarios*. Specific issues to be considered as part of a worst case scenario are types of fuel (paper, plastics, chemicals), form and arrangement of fuel (furniture, shredded newspaper, stacked chairs), availability of suppression systems (sprinkler system, fire department), capability of suppression systems (proper sprinkler system design, fire department manning, fire department response time) and capability of occupants (awake, asleep, intoxicated, physically or mentally impaired).

Comment: A few commenters suggested identifying recommended alternatives to complete sprinkler protection such as specific compartmentation or detection system requirements.

Response: The Act specifies one method, complete sprinkler protection, of achieving a prescribed level of life safety. The *equivalent level of safety* option is the exception to the general rule of complete sprinkler protection. If a list of alternatives was provided, sprinkler protection would become one of several options instead of the intended primary choice. In applying the *equivalent level of safety* provision, each building must be evaluated on its own merits and an individualized fire protection strategy developed. Each application of the *equivalent level of safety* option will involve a different set of circumstances. A list of recommended alternatives would not provide the necessary flexibility or allow for scientific and technological advancements.

Comment: A few comments expressed concern that the regulation attempts to force the use of computer based fire models which the commenters suggested were in the infancy stages of development and produced inconsistent results.

Response: The law is explicit that equivalency be based on a fire protection engineering analysis. The proposed rule suggests several tools that can be chosen based on the specific situation, including fire models. The decision of which tools to use is left to the engineer and agency to decide, based on the needs of each case. The use of engineering calculation methods is encouraged, models are but one way of efficiently applying first principles.

From a public policy perspective, the use of engineering applications must be encouraged to better prepare the engineering community for global competition. A Conference on Firesafety Design in the 21st Century, held in May 1991, at Worcester Polytechnic Institute, graphically illustrated how far the United States had lagged behind other countries in developing performance-

based building codes and applying analytical measurement techniques. Computer based models are readily accepted for use in a variety of countries, including Japan, United Kingdom, New Zealand, and Australia. These countries have embraced these design concepts and are capable of building and operating better performing and most cost-effective facilities. Recognizing this face, the National Fire Protection Association has established a task force on its Board of Directors to expedite its activities in the development and dissemination of computational methods.

These computational methods are no longer research and development activities. A variety of validation tests on many different models have been reported and indicate very good correlation with full scale fire tests and experience. Calculation procedures, including computer models, have been used in fire reconstruction with excellent results in determining the course of events. New information is being developed almost daily, supporting the use of calculation methods and models to develop sound engineering solutions to fire protection problems.

Finally, the various tools suggested in the proposed rule have a wide variety of support. The Fire Safety Evaluation System, for example, is codified in the manual Alternative Approaches to Life Safety (NFPA 101M), which is developed and accepted through the national consensus standards process. Numerous calculation methods have been accepted and compiled in the Handbook of Fire Protection Engineering, the source document for engineering methods for the fire protection engineering profession. The use of calculation methods and computer models is commonplace in other engineering disciplines. If fire protection engineering is to be accepted as an engineering discipline, it must accept, understand, and use these analytical tools.

D. Qualifications and Consistency Issues

Comment: Several comments were received regarding the qualifications of the personnel conducting the *equivalent level of safety* analyses.

Response: The required years of experience factor has been increased from two to four. This modification brings the three qualification options into closer agreement. The education requirement has been modified to reflect technical differences between undergraduate and graduate engineering programs. In addition, it has been revised to allow for engineers trained outside the United States.

Comment: A number of commenters inquired as to who should or could review *equivalent level of safety* analyses.

Response: As stated in the proposed rule, the head of the agency making facility improvements or providing Federal assistance is ultimately responsible for determining the acceptability of an *equivalent level of safety* analysis. In developing this determination, an independent review of the analysis by Government fire protection engineering professionals will be required. However, a few fire protection engineering professionals, employed by Federal Government agencies, indicated they did not have the expertise to conduct the required reviews. This concern was not shared by other fire protection engineers, including those working for private consulting firms. Comments from these engineers indicated they could conduct and review the analyses as appropriate. It may be necessary for Government agencies who lack in-house professional expertise to contract with private firms or other Government agencies (General Services Administration Central Office for example) for services to review *equivalent level of safety* analyses.

Several commenters expressed a desire to have specific Federal Government agency, the General Services Administration, responsible for the review of all *equivalent level of safety* analyses. Discussion of the issues associated with this option is beyond the scope of this regulation. As resources permit, the General Services Administration will develop and distribute, from time to time, information on conducting and evaluating *equivalent level of safety* analyses. In addition, the GSA will maintain a library of its own successful analyses and will seek to establish a dialogue with other agencies concerning determining an *equivalent level of safety*. Other Federal agencies should consider maintaining their own libraries of *equivalent level of safety* analyses.

A final issue associated with review of *equivalent level of safety* analyses concerns the involvement of local jurisdictions. Implementation of the Federal Fire Safety Act and this regulation cannot place a burden on local jurisdictions. Local jurisdictions cannot be required to review or evaluate an *equivalent level of safety* analysis. However, the *equivalent level of safety* analysis should be provided to the local jurisdiction as part of the required prefire planning.

Comment: Some comments were received concerning the consistency to be expected from the *equivalent level of safety* analyses.

Response: Any engineering analysis is dependent on a variety of assumptions. Individuals are likely to make different assumptions. Even in the interpretation of written words in a code book, different courses of action are recommended by different individuals. Uniformity of application is an issue inherent in dealing with human beings, and not unique to engineering analyses. An analysis based on the application of science-based first principles should provide consistent results. While the recommended corrective actions may differ, the use of personnel with the minimum qualifications identified in the regulation will ensure that the technical support for the recommendations is consistent with the governing principles of physics and chemistry.

E. Miscellaneous

Comment: A number of commenters identified editorial corrections or provided updated or corrected statistical data.

Response: These comments have been adopted to the extent the referenced section of the regulation remains in the final rule.

VI. Summary of Changes

As a result of the public comments, a number of changes were made to the regulation. These changes are briefly outlined in this section.

1. The scope of the regulation has been modified and expanded to clarify the intent of this regulation and its impact on local codes and standards.

2. The qualification requirements have been modified to bring the three alternatives into closer alignment, clarify some issues, and provide opportunities for engineers educated in other countries.

3. The *room of origin* has been defined to set a maximum limit on the potential size of an involved area.

4. The definition of *reasonable worst case scenario* has been expanded to clarify its meaning.

5. The equivalency criteria have been changed to better link the equivalency measurement to the mandated baseline level of safety associated with complete sprinkler protection.

The General Services Administration (GSA) has determined that this rule is a significant regulatory action for the purposes of Executive Order 12866. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management

regulation will have little or no cost effect on society. Therefore, the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 101–6

Civil rights, Government property management, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Fire protection, Reporting and recordkeeping requirements, Transportation.

For the reasons set out in the preamble, 41 CFR Part 101–6 is amended as follows:

PART 101–6—MISCELLANEOUS REGULATIONS

1. The authority citation for 41 CFR Part 101–6 continues to read as follows:

Authority: Sec 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 31 U.S.C. 1344(e)(1).

Subpart 106–6.6—Fire Protection (Firesafety) Engineering

2. Subpart 101–6.6 is added to read as follows:

Subpart 101–6.6—Fire Protection (Firesafety) Engineering

Sec.

101–6.600 Scope of subpart.
101–6.601 Background.
101–6.602 Application.
101–6.603 Definitions.
101–6.604 Requirements.
101–6.605 Responsibility.

§ 101–6.600 Scope of subpart.

This subpart provides the regulations of the General Services Administration (GSA) under Title I of the Fire Administration Authorization Act of 1992 concerning definition and determination of *equivalent level of safety*. The primary objective of this regulation is to provide a quantifiable means of determining compliance with the requirements of the Act. It is not a substitute for compliance with building and fire code requirements typically used in construction and occupancy of buildings.

§ 101–6.601 Background.

(a) The Fire Administration Authorization Act of 1992 (Pub. Law 102–522) was signed into law by the President on October 26, 1992. Section 106 Fire Safety Systems in Federally Assisted Buildings, of Title I—United States Fire Administration, is commonly referred to as the Federal Fire Safety Act of 1992. This section amends the Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 *et seq.*) to require sprinklers or an *equivalent of safety*, in certain types of Federal employee office buildings, Federal employee housing units, and federally assisted housing units.

(b) The definition of an automatic sprinkler system is unique to the Act. In addition to describing the physical characteristics of an automatic sprinkler system, the definition sets a performance objective for the system. Automatic sprinkler systems installed in compliance with the Act must *protect human lives*. Sprinklers would provide the level of life safety prescribed in the Act by controlling the spread of fire and its effects beyond the room of origin. A functioning sprinkler system should activate prior to the onset of flashover.

(c) This subpart establishes a general measure of building firesafety performance. To achieve the level of life safety specified in the Act, the structure under consideration must be designed, constructed, and maintained to minimize the impact of fire. As one option, building environmental conditions are specified in this subpart to ensure the life safety of building occupants outside the room of fire origin. They should be applicable independent of whether or not the evaluation is being conducted for the entire building or for just the hazardous areas. In the latter case, the room of origin would be the hazardous area while any room, space, or area could be a room of origin in the entire building scenarious.

(d) The *equivalent level of safety* regulation in this subpart does not address property protection, business interruption potential, or firefighter safety during fire fighting operations. In situations where firefighters would be expected to rescue building occupants, the safety of both firefighters and occupants must be considered in the *equivalent level of safety* analysis. Thorough prefire planning will allow firefighters to choose whether or not to enter a burning building solely to fight a fire.

§ 101–6.602 Application.

The requirements of the Act and this subpart apply to all Federal agencies and all federallly owned and leased buildings in the United States, except those under the control of the Resolution Trust Corporation.

§ 101–6.603 Definitions

(a) *Qualified fire protection engineer* is defined as an individual, with a thorough knowledge and understanding of the principles of physics and chemistry governing fire growth, spread, and suppression, meeting one of the following criteria:

(1) An engineer having an undergraduate or graduate degree from a college or university offering a course of study in fire protection or firesafety engineering, plus a minimum of four (4) years work experience in fire protection engineering,

(2) A professional engineer (P.E. or similar designation) registered in Fire Protection Engineering, or

(3) A professional engineer (P.E. or similar designation) registered in a related engineering discipline and holding Member grade status in the International Society of Fire Protection Engineers.

(b) *Flashover* means fire conditions in a confined area where the upper gas layer temperature reaches 600 °C (1100 °F) and the heat flux at floor level exceeds 20 kW/m² (1.8 Btu/ft²/sec).

(c) *Reasonable worst case fire scenario* means a combination of an ignition source, fuel items, and a building location likely to produce a fire which would have a significant adverse impact on the building and its occupants. The development of *reasonable worst case scenarios* must include consideration of types and forms of fuels present (e.g., furniture, trash, paper, chemicals), potential fire ignition locations (e.g., bedroom, office, closet, corridor), occupant capabilities (e.g., awake, intoxicated, mentally or physically impaired), numbers of occupants, detection and suppression system adequacy and reliability, and fire department capabilities. A quantitative analysis of the probability of occurrence of each scenario and combination of events will be necessary.

(d) *Room of origin* means an area of a building where a fire can be expected to start. Typically, the size of the area will be determined by the walls, floor, and ceiling surrounding the space. However, this could lead to unacceptably large areas in the case of open plan office space or similar arrangements. Therefore, the maximum allowable fire area should be limited to 200 m² (2000 ft²) including intervening spaces. In the case of residential units, an entire apartment occupied by one tenant could be considered as the *room of origin* to the extent it did not exceed the 200 m² (2000 ft²) limitation.

§ 101–6.604 Requirements.

(a) The equivalent level of life safety evaluation is to be performed by a qualified fire protection engineer. The analysis should include a narrative discussion of the features of the building structure, function, operational support systems and occupant activities

which impact fire protection and life safety. Each analysis should describe potential reasonable worst case fire scenarios and their impact on the building occupants and structure. Specific issues which must be addressed include rate of fire growth, type and location of fuel items, space layout, building construction, openings and ventilation, suppression capability, detection time, occupant notification, occupant reaction time, occupant mobility, and means of egress.

(b) To be acceptable, the analysis must indicate that the existing and/or proposed safety systems in the building provide a period of time equal to or greater than the amount of time available for escape in a similar building complying with the Act. In conducting these analyses, the capability, adequacy, and reliability of all building systems impacting fire growth, occupant knowledge of the fire, and time required to reach a safety area will have to be examined. In particular, the impact of sprinklers on the development of hazardous conditions in the area of interest will have to be assessed. Three options are provided for establishing that an *equivalent level of safety* exists.

(1) In the first option, the margin of safety provided by various alternatives is compared to that obtained for a code complying building with complete sprinkler protection. The margin of safety is the difference between the available safe egress time and the required safe egress time. Available safe egressd time is the time available for evacuation of occupants to an area of safety prior to the onset of untenable conditions in occupied areas or the egress pathways. The required safe egress time is the time required by occupants to move from their positions at the start of the fire to areas of safety. Available safe egress times would be developed based on analysis of a number of assumed *reasonable worst case fire scenarios* including assessment of a code complying fully sprinklered building. Additional analysis would be used to determine the expected required safe egress times for the various scenarios. If the margin of safety plus an appropriate safety factor is greater for an alternative than for the fully sprinklered building, then the alternative should provide an *equivalent level of safety.*

(2) A second alternative is applicable for typical office and residential scenarios. In these situations, complete sprinkler protection can be expected to prevent flashover in the room of fire origin, limit fire size to no more than 1 megawatt (950 Btu/sec), and prevent flames from leaving the room of origin. The times required for each of these conditions to occur in the area of interest must be determined. The shortest of these three times would become the time available for escape. The difference between the minimum time available for escape and the time required for evacuation of building occupants would be the target margin of safety. Various alternative protection strategies would have to be evaluated to determine their impact on the times at which hazardous conditions developed in the spaces of interest and the times required for egress. If a combination of fire protection systems provides a margin of safety equal to or greater than the target margin of safety, then the combination could be judged to provide an *equivalent level of safety.*

(3) As a third option, other technical analysis procedures, as approved by the responsible agency head, can be used to show equivalency.

(c) Analytical and empirical tools, including fire models and grading schedules such as the Fire Safety Evaluation System (Alternative Approaches to Life Safety, NEPA 101M) should be used to support the life safety equivalency evaluation. If fire modeling is used as part of an analysis, an assessment of the predictive capabilities of the fire models must be included. This assessment should be conducted in accordance with the American Society for Testing and Materials Standard Guide for Evaluating the Predictive Capability of Fire Models (ASTM E 1355).

§ 101–6.605 Responsibility.

The head of the agency responsible for physical improvements in the facility or providing Federal assistance or a designated representative will determine the acceptability of each *equivalent level of safety* analysis. The determination of acceptability must include a review of the fire protection engineer's qualifications, the appropriateness of the fire scenarios for the facility, and the reasonableness of the assumed maximum probable loss. Agencies should maintain a record of each accepted *equivalent level of safety* analysis and provide copies to fire departments or other local authorities for use in developing prefire plans.

Dated: September 29, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 94–27020 Filed 10–31–94; 8:45 am]

BILLING CODE 6820–23–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–70; RM–8168]

Radio Broadcasting Services; Wellton, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 283C2 to Wellton, Arizona, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Farmworkers Communications, Inc. See 58 FR 17819, April 6, 1993. Coordinates used for Channel 283C2 at Wellton are 32–42–40 and 114–12–15. Wellton is located within 320 kilometers (199 miles) of the United States-Mexico border and, therefore, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated.

DATES: Effective December 9, 1994.

The window period for filing applications for Channel 283C2 at Wellton, Arizona, will open on December 9, 1994, and close on January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

ADDRESSES: Questions related to window application filing process for Channel 283C2 at Wellton, Arizona, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–70, adopted October 19, 1994, and released October 25, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154,303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Wellton, Channel 283C2.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–26959 Filed 10–31–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–248; RM–8321]

Radio Broadcasting Services; Pleasant City, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Peter L. Cea, allots Channel 221A to Pleasant City, Ohio, as the community's first local aural transmission service. *See* 58 FR 51603, October 4, 1993. Channel 221A can be allotted to Pleasant City in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.7 kilometers (7.2 miles) northeast, at coordinates North Latitude 40–00–00 and West Longitude 81–29–30, to avoid a short-spacing to Station WMPO–FM, Channel 221A, Middleport, Ohio. Canadian concurrence has been received since Pleasant City is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, the proceeding is terminated.

DATES: Effective December 9, 1994. The window period for filing applications will be open on December 9, 1994, and close on January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–248, adopted October 18, 1994, and released October 25, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Pleasant City, Channel 221A.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–26960 Filed 10–31–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–286; RM–8377]

Radio Broadcasting Services; Jeffersontown, Shelbyville and Richmond, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request Channel Chek, Inc., substitutes Channel 267A for Channel 269A at Jeffersontown, Kentucky, and modifies Station WLSY(FM)'s license accordingly. We also, at the request of Shelby County Broadcasting, Inc., substitute Channel 269A for Channel 267A at Shelbyville, Kentucky, and modify Station WTHQ(FM)'s license accordingly. In addition, at the request of WCBR Radio, Inc., we denied the substitution of Channel 268C3 for Channel 269A at Richmond, Kentucky. *See* 58 FR 63319, December 1, 1993.

EFFECTIVE DATE: December 12, 1994.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–286, adopted October 18, 1994, and released October 26, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel 267A can be allotted to Jeffersontown in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.2 kilometers (3.8 miles) northeast, in order to avoid a short-spacing to Station WKKG(FM), Channel 268B, Columbus, Indiana, and to a construction permit for Station WRZI(FM), Channel 268A, Vine Grove, Kentucky. The coordinates for Channel 267A at Jeffersontown are North Latitude 38–13–41 and West Longitude 85–30–30. Channel 269A can be allotted to Shelbyville in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.1 kilometer (3.8 miles) east, to avoid a short-spacing to Station WKYL(FM), Channel 271A, Lawrenceburg, Kentucky. The coordinates for Channel 269A at Shelbyville are North Latitude 38–12–48 and West Longitude 85–09–13. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 269A and adding Channel 267A at Jeffersontown; and by removing Channel 267A and adding Channel 269A at Shelbyville.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–26962 Filed 10–31–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–276; RM–8353]

Radio Broadcasting Services; Franklinton, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of GACO Broadcasting Corporation, allots Channel 255A to Franklinton, Louisiana. *See* 58 FR 63321, December 1, 1993. Channel 255A can be allotted to Franklinton, Louisiana, in compliance with the Commission's minimum distance separation requirements without the

imposition of a site restriction. The coordinates for Channel 255A at Franklinton are North Latitude 30–50–54 and West Longitude 90–09–18. With this action, this proceeding is terminated.

EFFECTIVE DATES: December 9, 1994.

The window period for filing applications will open on December 9, 1994, and close on January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–276, adopted October 19, 1994, and released October 25, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 75—[AMENDED]

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Franklinton, Channel 255A.

John Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–26958 Filed 10–31–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 59, No. 210
Tuesday, November 1, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–44–AD]

Airworthiness Directives; Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD) that is applicable to all transport category airplanes. The existing AD currently requires installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles; establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories; installation of ashtrays at certain locations; and repetitive inspections to ensure that lavatory waste receptacle doors operate correctly. That action was prompted by fires occurring in lavatories, which were caused by, among other things, the improper disposal of smoking materials in lavatory waste receptacles. The actions specified by the AD are intended to prevent such fires. This action would provide for an alternative action regarding the current requirement to install specific placards at certain locations.

DATES: Comments must be received by December 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Monica Nemecek, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2773; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–44–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1974, the FAA issued AD 74–08–09, amendment 39–1917, which is applicable to all transport category airplanes having one or more lavatories equipped with paper or linen waste receptacles. That AD requires:

1. installation of placards on each side of each lavatory door over the door knob, containing wording to prohibit smoking in the lavatory;
2. installation of a placard on or near each lavatory paper or linen waste disposal receptacle door, containing wording to prohibit disposing of smoking materials in the waste receptacles;
3. establishment of a procedure to announce to airplane occupants that smoking is prohibited in the aircraft lavatories;
4. installation of ashtrays on or near the entry side of the lavatory doors; and
5. repetitive inspections of all lavatory paper and linen waste receptacle enclosure access doors and disposal doors for proper operation.

That action was prompted by numerous incidents of fire that had occurred in the lavatory paper and linen waste receptacles of transport category airplanes, which were apparently caused by smoking materials deposited by passengers or crew in these receptacles. These fires can be a significant threat to the safety of persons on the airplane because of the emission of toxic smoke and the possibility of the fire progressing to critical components. The requirements of AD 74–08–09 are intended to prevent such fires.

Subsequent to the issuance of that AD, certain required actions contained in it were added to part 25 of the Federal Aviation Regulations (FAR) (14 CFR part 25) ("Airworthiness Standards: Transport Category Airplanes") by amendment 25–51 (issued March 6, 1980), making them applicable to all transport airplane designs certificated after the effective date of that amendment. Specifically, amendment 25–51 added a requirement to section 25.853 of the FAR (14 CFR 25.853) calling for the installation of "No Smoking In Lavatory" or "No Smoking" placards on both sides of the lavatory doors. Additionally, "No Smoking" symbology was permitted to be used on the placards in addition to the required wording.

Amendment 25–72 (issued August 20, 1990) subsequently relocated these requirements to section 25.791 of the FAR (14 CFR 25.791) ("Passenger information signs and placards"). However, during the process, that amendment also incorporated the current FAA determinations that the

lavatory door placards are acceptable if located "on or adjacent to" the lavatory doors [ref. section 25.791(d)]; and that appropriate "No Smoking" symbology may be used in lieu of wording specifying "No Smoking," "No Smoking in Lavatory," and "No Cigarette Disposal" [ref. section 25.791(e)].

Consequently, there now exists a difference between current type design philosophy and the requirements of AD 74–08–09.

It has recently come to the FAA's attention that some aircraft certificated in accordance with section 25.791, amendment 25–72, and properly equipped with symbology-only placards installed adjacent to the lavatory doors, are being required to have worded placards added onto the door in accordance with AD 74–08–09 upon entering service.

The FAA's intent in requiring installation of the "No Smoking" placards is to ensure that there is a visual reminder to passengers and other personnel onboard the airplane that smoking is prohibited in the lavatories. Whether this visual reminder is in the form or words or symbols is not necessarily a concern to the FAA, as long as the intent of the placards is clear and recognizable by the average person. The FAA considers that having airlines install worded placards in addition to their currently installed symbology placards represents an unnecessary cost burden to industry, with no added benefit to safety. Therefore, the FAA finds it is appropriate to revise AD 74–08–09 in order to make its requirements for placard installation consistent with those of part 25 of the FAR.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would continue to require all of the same actions as currently required by AD 74–08–09. However, this action proposes to revise AD 74–08–09 to provide for an alternative action relative to the current requirement to install specific placards at specific locations. This proposal would permit operators to install the "No Smoking" placards in an area conspicuously located on or adjacent to each side of the lavatory door. In addition, in lieu of the currently required specified wording for required placards, this action proposes to permit the use of symbols that clearly express the intent of the placard.

Since this proposed action only provides for an alternative method of complying with an existing rule, it does not add any new additional economic burden on affected operators. The current costs associated with this amendment are reiterated below for the convenience of affected operators:

The costs associated with the currently required placard installations entail approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. The cost of required parts is negligible. Based on these figures, the total cost impact of the installation requirements of the AD on U.S. operators is estimated to be $60 per airplane.

The costs associated with the currently required inspections entail approximately 1.5 work hours per airplane per inspection, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspection requirements of this AD on U.S. operators is estimated to be $90 per airplane per inspection.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–1917, and by adding a new airworthiness directive (AD), to read as follows:

Transport Category Aircraft: Docket 94–NM–44–AD. Revises AD 74–08–09, Amendment 39–1917.

Applicability: All transport category airplanes, certificated in any category, that have one or more lavatories equipped with paper or linen waste receptacles.

Note: The following is a partial list of aircraft, some or all models of which are type certificated in the transport category and have lavatories equipped with paper or linen waste receptacles:

Aerospatiale Modelx ATR42 and ATR72 series airplanes;
Airbus Models A300, A310, A300–600, A320, A330, and A340 series airplanes;
Boeing Models 707, 720, 727, 737, 747, 757, and 767 series airplanes;
Boeing Model B–377 airplanes;
British Aircraft Models BAC 1–11 series, BAe-146 series, and ATP airplanes;
CASA Model C–212 series airplanes;
Convair Models CV–580, 600, 640, 880 and 990 series airplanes;
Convair Models 240, 340, and 440 series airplanes;
Curtiss-Wright Model CW 46;
de Havilland Models DHC–7 and DHC–8 series airplanes;
Fairchild Modesl F–27 and C–82 series airplanes;
Fairchild-Hiller Model FH–227 series airplanes;
Fokker Models F27 and F28 series airplanes;
Grumman Model G–159 series airplanes;
Gulfstream Model 1159 series airplanes;
Hawker Siddeley Model HS–748;
Jetstream Model 4101 series airplanes;
Lockheed Models L–1011, L–188, L–1049, and 382 series airplanes;
Martin Model M–404 airplanes;
McDonnell Douglas Models DC–3, -4, -6, -7, -8, -9, and -10 series airplanes;
Model MD–88 airplanes; and Model MD–11 series airplanes;
Nihon Model YS–11;
Saab Models SF340A and SAAB 340B series airplanes;
Short Brothers and Harlin Model SC–7 series airplanes;
Short Brothers Models SD3–30 and SD3–60 series airplanes:

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fires that could result from smoking materials being dropped into lavatory paper or linen waste receptacles, accomplish the following:

(a) Within 60 days after August 6, 1974 (the effective date of amendment 39–1917, AD 74–08–09), or before the accumulation of any time in service on a new production aircraft after delivery, whichever occurs later, except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to a base where compliance may be accomplished, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Install a placard either on each side of each lavatory door over the door knob, or on each side of each lavatory door, or adjacent to each side of each lavatory door. The placards must either contain the legible words, "No Smoking in Lavatory" or "No Smoking;" or contain "No Smoking" symbology in lieu of words; or contain both wording and symbology; to indicate that smoking is prohibited in the lavatory. The placards must be of sufficient size and contrast and be located so as to be conspicuous to lavatory users.

(2) Install a placard on or near each lavatory paper or linen waste disposal receptacle door, containing the legible words or symbology indicating "No Cigarette Disposal."

(b) Within 30 days after August 6, 1974, establish a procedure that requires that no later than a time immediately after the "No Smoking" sign is extinguished following takeoff, an announcement be made by a crewmember to inform all aircraft occupants that smoking is prohibited in the aircraft lavatories; except that, if the aircraft is not equipped with a "No Smoking" sign, the required procedure must provide that the announcement be made prior to each takeoff.

(c) Within 180 days after August 6, 1974, or before the accumulation of any time in service on a new production aircraft, whichever occurs later, except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished, install a self-contained, removable ashtray on or near the entry side of each lavatory door. One ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of each lavatory door served.

(d) Within 30 days after August 6, 1974, and thereafter at intervals not to exceed 1,000 hours time-in-service from the last inspection; accomplish the following:

(1) Inspect all lavatory paper and linen waste receptacle enclosure access doors and disposal doors for proper operation, fit, sealing, and latching for the containment of possible trash fires.

(2) Correct all defects found during the inspections required by paragraph (d)(1) of this AD.

(e) Upon the request of an operator, the FAA Principal Maintenance Inspector may adjust the 1,000 hour repetitive inspection interval specified in paragraph (d)(1) of this AD to permit compliance at an established inspection period of the operator if the request contains data to justify the requested change in the inspection interval.

Issued in Renton, Washington, on October 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-27052 Filed 10-31-94; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

RIN 1515-AB51

Treatment of Reusable Shipping Devices Arriving From Canada or Mexico

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to allow certain foreign-manufactured shipping devices arriving from Canada or Mexico to be released, under specified conditions, without entry and payment of duty at the time of arrival and without the devices being serially numbered or marked, if they are always transported on or within either intermodal and similar containers or containers which are themselves vehicles or vehicle appurtenances and accessories. As millions of these devices are used annually in hundreds of millions of transportation moves between the United States and Canada or Mexico, Customs recognizes that requiring the importing and exporting communities to individually mark and track these devices places a burden on commerce that Customs should attempt to alleviate.

DATES: Comments must be received on or before January 3, 1995.

ADDRESSES: Comments (preferably in triplicate) must be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Louis Hryniw, Office of Regulatory Audit, (202-927-1100).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Chapter 98, Subchapter III, U.S. Note 3, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), in order to facilitate the prompt clearance at ports of entry of certain substantial containers and holders, the Secretary of the Treasury is authorized to permit the admission of the containers without entry and to permit any duties thereon to be paid cumulatively from time to time either before or after their importation when conditions exist which permit adequate Customs controls to be maintained. Pursuant to subheading 9803.00.50, HTSUS, substantial containers and holders which are of foreign production and previously imported and duty (if any) thereon paid, or if of a class specified by the Secretary of the Treasury as instruments of international traffic (IITs) are free of duty. Pursuant to 19 U.S.C. 1322, instruments of international traffic shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instruction of the Secretary of the Treasury.

Current regulations regarding shipping devices are set forth in §§ 10.41a and 10.41b, Customs Regulations (19 CFR 10.41a and 10.41b). According to § 10.41a, certain containers are designated as IITs and, as such, may be released without entry or duty subject to the provisions of the section. According to § 10.41b, other substantial containers and holders are required to be serially numbered and marked in order to be released without entry or payment of duty. Section 10.41b(b), (c) and (d) currently describe the numbering and marking requirements.

In this latter regard, Customs has received a petition from, and has met with representatives of, the American Automobile Manufacturers Association (AAMA) concerning an amendment to the Customs Regulations intended to ease the burden of serially numbering and marking certain containers arriving from Canada or Mexico. According to the AAMA, the business community cannot efficiently and economically individually mark and track the millions of these smaller shipping devices that hold goods, such as racks, holders, pallets, totes, and packaging material, that are used annually in hundreds of millions of transportation moves between the United States and Canada or Mexico without placing an excessive and undue burden on commerce. In the highly integrated manufacturing environment of today's economy, programs which place strict reporting, control and usage requirements on reusable shipping devices, beyond what is actually necessary for Customs to acquit its responsibilities, create an unusual and unnecessary burden on the growth and competitiveness of companies located in the U.S. Restrictions on the use and control of these reusable shipping devices needlessly increase the cost of goods and materials in the U.S.

After reviewing the AAMA proposal, Customs believes that the requirements to serially number and mark the substantial holders and containers in

question can be eased without risking a loss of revenue.

Accordingly, Customs is proposing to amend § 10.41b to allow an importer or his agent to apply to a district director of Customs for permission to have certain foreign-made shipping devices arriving from Canada or Mexico released without entry and payment of duty at the time of arrival and without the devices being serially numbered or marked.

The application would, among other things, describe the subject shipping devices, identify the ports where they would arrive and depart the U.S., and set forth the proposed program for accounting for and reporting the shipping devices to Customs. If the application is approved, the importer or agent would submit to Customs a periodic report for the shipping devices, which could not be less frequent than annual, using his own accounting and recordkeeping procedures to keep track of the devices. Records supporting the periodic reports of the shipping devices would have to be retained for at least 3 years from the date the reports are filed with Customs. Any duty applicable to the devices would have to be tendered cumulatively at the time specified in the approved application. Such tender could not occur more than 90 days following the end of the related reporting period.

In the event the application should be denied, in whole or in part, by the district director, the applicant could appeal the denial to the regional commissioner.

By eliminating the serial numbering and marking of the shipping devices concerned, and by permitting a consolidated accounting or reporting period for such devices, the real benefit of the proposal, it is believed, will be reduced operating costs for the international trade community.

In this respect, the proposed rule would achieve the desired purposes for those who wish to apply, by supplanting the existing system which depends upon physical examination of the shipping devices concerned as well as the maintenance of elaborate and costly identification systems, with a system based upon the applicant's own books and records, including, most importantly, acquisition and repair cost records. Since duty would be due on all shipping devices acquired within the period covered by the periodic report which the applicant would undertake to file, even though the devices may not have yet been used in transborder traffic, accounting for specific movements of the devices or for diversions would be superfluous.

The proposed amendments to the Customs Regulations are set forth below.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

For the reasons set forth in the preamble, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor would the proposed amendments result in a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on this collection of information should be sent to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to Customs at the address set forth previously.

The collection of information in these proposed regulations is in § 10.41(b). The information is necessary so that Customs may determine whether the plan submitted by the importer or his agent to keep track of and pay duty on his shipping devices is acceptable. The likely respondents would be business organizations.

Estimated total annual reporting and/or recordkeeping burden:

Estimated average annual burden per respondent/recordkeeper:

Estimated number of respondents and/or recordkeepers:

Estimated annual frequency of responses:

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

Proposed Amendments to the Regulations

It is proposed to amend part 10, Customs Regulations (19 CFR part 10), as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 would continue to read as follows, and the specific sectional authority for part 10 would be amended by adding specific authority for § 10.41b, in appropriate numerical order thereunder, to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Section 10.41b also issued under 19 U.S.C. 1202 (Chapter 98, Subchapter III, U.S. Note 3, Harmonized Tariff Schedule of the U.S. (HTSUS)).

* * * * *

2. It is proposed to amend section 10.41b by redesignating paragraphs (b), (c), (d), (e), (f), (g) and (h) as (c), (d), (e), (f), (g), (h) and (i), respectively, and by adding a new paragraph (b) to read as follows:

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

* * * * *

(b) Subject to the approval of a district director pursuant to the procedures described in this paragraph, certain foreign-manufactured shipping devices arriving from Canada or Mexico, including racks, holders, pallets, totes, boxes and cans, need not be serially numbered or marked if they are always transported on or within either intermodal and similar containers or containers which are themselves vehicles or vehicle appurtenances and accessories such as twenty and forty foot containers of general use and "igloo" air freight containers.

(1) An importer or his agent, regardless of whether the importer is the owner of the foreign-manufactured shipping devices, may apply to a district director of Customs at one of the

importer's chiefly utilized Customs districts or the district within which the importer's or agent's recordkeeping center is located for permission to have such shipping devices arriving from Canada or Mexico released without entry and payment of duty at the time of arrival and without the devices being serially numbered or marked. Application may be filed in only one district. Although no particular format is specified for the application, it must contain the information enumerated in paragraph (b)(2) of this section. Any duty which may be due on these shipping devices shall be tendered and paid cumulatively at the time specified in an approved application, which may be either before or after the arrival of the shipping devices in the U.S. (*e.g.*, at the time a contract, purchase order or lease agreement is issued).

(2) The application shall:

(i) Describe the types of shipping devices covered, their classification under the Harmonized Tariff Schedule of the U.S. (HTSUS), their countries of origin, and whether and to whom required duty was paid for them or when it will be paid for them, including duties for repair and modifications to such shipping devices while outside the U.S.;

(ii) Identify the ports where the shipping devices will be arriving and departing the U.S., as well as the particular movements and conveyances in which they are intended to be utilized;

(iii) Describe the applicant's proposed program for accounting for and reporting these shipping devices;

(iv) Identify the reporting period (which shall in no event be less frequent than annual), as well as the payment period within which applicable duty and fees must be tendered (which shall in no event exceed 90 days following the close of the related reporting period);

(v) Describe the type of inventory control and recordkeeping, including the specific records, to be maintained to support the reports of the shipping devices; and

(vi) Provide the location in the United States where the records supporting the reports will be retained by law and will be made available for inspection and audit upon reasonable notice. (The records supporting the reports of the shipping devices must be kept for a period of at least 3 years from the date such reports are filed with the district director.)

(3) The application shall be filed along with a continuous bond containing the conditions set forth in § 113.66 of this chapter. If the application is approved by the district director and the conditions set forth in the application or of the bond are violated, the district director may issue a claim for liquidated damages equal to the domestic value of the container. If the domestic value exceeds the amount of the bond, the claim for liquidated damages will be equal to the amount of the bond.

(4) The district director receiving the application shall evaluate the program proposed to account for, report and maintain records of the shipping devices. The district director may suggest amendments to the applicant's proposal. The district director shall notify the applicant in writing of his decision on the application within 90 days of its receipt, unless this period is extended for good cause and the applicant so informed in writing. The district director shall have authority to approve the application and procedures for utilization in each district or area identified in the application.

(5) If the decision is to deny the application, in whole or in part, the district director shall specify the reason for the denial in a written reply, and inform the applicant that such denial may be appealed to the regional commissioner within 21 days of its date. If the decision is appealed, the regional commissioner shall coordinate his review thereof with the district director. The regional commissioner's decision shall be issued, in writing, within 30 days of the receipt of the appeal, and shall constitute the final Customs determination concerning the application.

(6) If the application is approved, an importer may later apply to amend his application to add or delete particular types of shipping devices listed in the application and districts and areas identified in the application in which the procedures set forth in the application may be utilized. If a requested amendment to an approved application should be denied, in whole or in part, by the district director, the appeal process described in paragraph (b)(5) of this section shall apply.

(7) Application for and approval of a reporting program shall not limit or restrict the use of other alternative means for obtaining the release of holders, containers and shipping devices.

* * * * *

George J. Weise,

Commissioner of Customs.

Approved: October 13, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–26955 Filed 10–31–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 638

Job Corps; Allowances and Allotments

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: Job Corps proposes to amend its regulations on student allowances and allotments. The objectives are: to increase the length of enrollment requirements for readjustment allowance eligibility, in order to encourage students to lengthen their enrollment and maximize Job Corps offerings and benefits; and to amend the allotment section to coincide with revisions in readjustment allowance accrual.

DATES: All comments and information should be submitted by December 1, 1994.

ADDRESSES: Send comments to the Assistant Secretary for Employment and Training, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW., room N–4510, Washington, DC 20210, Attention: Peter E. Rell, Director, Office of Job Corps.

FOR FURTHER INFORMATION CONTACT: Dana Davidson Johnson, Office of Job Corps, Division of Program Management and Review. Telephone: (202) 219–6568 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Job Corps is devising a new pay and allotment system which will provide students with enough money to meet their basic needs, while adding greater incentives than are available in the current system to encourage student retention, performance, program completion, and length of enrollment. The proposed rule enables the Job Corps Director to increase the number of paid days for eligibility for readjustment allowances. This will encourage students to stay in the program longer. Students thus can be better prepared for employment,

particularly because this added time will encourage students to acquire social skills along with vocational and academic training.

Payroll will be conducted on a biweekly schedule versus the current twice-monthly procedure. The proposed rule ties into the implementation of the new Student Pay, Allowance and Management Information System (SPAMIS) utilized by Job Corps. The new pay system will be much more responsive than the current system, with individual student pay levels and leave status maintained on a current basis and status changes made by the Job Corps Centers as they occur. The proposed rule will allow the accrual of readjustment allowances to be set for each paid day and allotments to be processed on a biweekly basis.

This rule applies only to allowances and allotments for Job Corps students. The proposed rule is not classified as a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review." It does not (1) materially alter the budgetary impact of entitlements or the rights and obligations of recipients thereof; or (2) raise novel legal or policy issues arising out of legal mandates in the President's priorities. It is not likely (3) to result in having an annual effect on the economy of $100 million or more; or (4) to create a serious inconsistency or interfere with action taken or planned by another agency. As required by the Regulatory Flexibility Act, the Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 20 CFR Part 638

Contract programs, Labor, Training and employment programs.

Proposed Rule

Accordingly, 20 CFR part 638 is proposed to be amended as follows:

PART 638—[AMENDED]

1. The authority for part 638 continues to read as follows:

Authority: 29 U.S.C. 1579(a).

2. In § 638.524, paragraphs (b) and (c) are revised to read as follows:

§ 638.524 Allowances and allotments.

* * * * *

(b) The Job Corps Director shall ensure that each student receives a readjustment allowance for each paid day of satisfactory participation in Job Corps after termination from the program if he/she terminates after 210 days in pay status or after 180 days if he/she is a maximum benefits or vocational completer. In the event that a student receives a medical termination, he/she shall be eligible for the accrued readjustment allowance, regardless of length of stay or other considerations. See also paragraph (d) of this section. (Section 429(c)).

(c) The Job Corps Director shall establish procedures to allow students to authorize deductions from their readjustment allowance, which shall be matched by an equal amount from Job Corps funds and sent biweekly as an allotment by the SPAMIS Data Center to the student's spouse, child(ren) or other dependent, if such spouse, child(ren) or other dependent resides in any State in the United States.

* * * * *

Signed at Washington, DC, this 25th day of October 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–26928 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of change of meeting location.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing a change in the location of the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) meetings scheduled for November 8–10, 1994 in St. Louis, Missouri from the Embassy Suites to the Ramada Henry VIII Hotel and Conference Center. The meetings are open to the public. Information on room numbers will be available in the lobby of the designated building.

DATES: The meetings will be held November 8–10, 1994. The meeting will begin at 1:00 p.m. on November 8th and 7:00 a.m. on November 9th and 10th.

ADDRESS: Ramada Henry VIII Hotel and Conference Center, 4690 North Lindbergh, St. Louis, Missouri 63044, (314) 731–3040.

FOR FURTHER INFORMATION CONTACT: OSHA, U.S. Department of Labor, Office of Information and Consumer Affairs, Room N–3647, 200 Constitution Avenue NW., Washington, D.C. 20210; Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION: This document contains corrections to the notice published Tuesday, September 6, 1994, announcing the meeting of SENRAC in St. Louis. The location of the meetings scheduled for November 8–10, 1994 is changed from the Embassy Suites to the Ramada Henry VIII Hotel and Conference Center. The meeting will begin at 1:00 p.m. on November 8th and 7:00 a.m. on November 9th and 10th.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 *et seq.*; and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, D.C., this 27th day of October 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–27096 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ34–1–6418; FRL–5100–3]

Phoenix Ozone Nonattainment Area, Clean Air Act Section 182(f) Exemption Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The EPA is proposing to approve a petition submitted by the Arizona Department of Environmental Quality (ADEQ) requesting that the EPA grant an exemption for the Phoenix ozone nonattainment area (Phoenix Area) from the requirement to implement oxides of nitrogen (NO_x) Reasonably Available Control Technology (RACT). In accordance with the requirements of the Clean Air Act, as amended in 1990 (the Act or CAA), the Phoenix area may be exempted from the NO_x reduction requirements where the Administrator determines that net air quality benefits are greater in the absence of NO_x reductions from the sources concerned or that additional

NO_x reductions would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. The ADEQ petition uses the Urban Airshed Model (UAM) to demonstrate that additional NO_x reductions in the Phoenix Area would not contribute to attainment of the ozone NAAQS. The EPA is proposing to exempt the Phoenix Area from the requirement to implement NO_x RACT and the applicable NO_x general and transportation conformity requirements. The EPA is proposing approval of this action under provisions of the CAA regarding plan requirements for nonattainment areas.

DATES: Comments on this proposed action must be received in writing on or before December 1, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Chief, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the exemption petition are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted petition may be obtained from the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix Arizona 85012.

Maricopa County Air Pollution Control District, 2406 S. 24th Street, suite E214, Phoenix, Arizona 85034.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section (A–5–3), or Scott Bohning, Air Quality Section (A–2–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 Telephone: (415) 744–1202; (415) 744–1293.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_x emissions are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a NPRM (57 FR 55620) entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement) which describes the requirements of section 182(f). The November 25, 1992, notice should be referred to for further information on the NO_x requirements and is incorporated into this document by reference.

Section 182(f) of the Act requires States to apply the same requirements to major stationary sources of NO_x ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs). These requirements are RACT and New Source Review (NSR) for major stationary sources in certain ozone nonattainment areas.

The RACT requirements for major stationary sources of VOCs are contained in section 182(b)(2), while the NSR requirements are contained in section 182(a)(2)(C) and other provisions of section 182. Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_x CTGs issued before enactment, and EPA has not issued a CTG document for any NO_x sources since enactment of the CAA. Section 182(a)(2)(C) requires submittal of NSR rules incorporating the new preconstruction permitting requirements for new or modified sources. The RACT and NSR rules were required to be submitted by November 15, 1992.

The Phoenix area is classified as a moderate [1] nonattainment area for ozone; therefore this area is subject to the RACT and NSR requirements cited above and the November 15, 1992 deadline.[2] On April 13, 1994, the State of Arizona submitted a petition to the EPA requesting that the Phoenix area be exempted from the requirement to implement NO_x RACT measures pursuant to section 182(f) of the CAA. The exemption request is based on UAM modeling conducted in accordance with EPA guidelines.

General Criteria—Section 182(f) Exemption Requests

The NO_x RACT petition was submitted in accordance with the EPA guidance document entitled, *Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)* issued on December 16, 1993 (exemption guidance). In addition to the exemption guidance, EPA's NO_x exemption policy is contained in two memoranda [3] providing that under section 182(f)(1)(A), an exemption from the NO_x requirements may be granted for nonattainment areas outside the ozone transport region (OTR) if EPA determines that additional reductions of NO_x would not contribute to attainment of the NAAQS for those areas. EPA's approval of monitoring-based NO_x exemptions are granted on a contingent basis and last for only as long as the area's monitoring data continue to demonstrate attainment. As described below, EPA's approval of modeling-based NO_x exemptions are also granted on a contingent basis.

EPA's conformity rules [4, 5] also reference the section 182(f) exemption process as a means for exempting affected areas from NO_x conformity requirements.[6] Therefore, ozone nonattainment areas that are granted areawide section 182(f) exemptions under this approach will also be exempt from the NO_x general and transportation conformity requirements.

The EPA first provided guidance on NO_x exemptions in the NO_x Supplement. The guidance states that EPA would rescind a NO_x exemption in cases where NO_x reductions were later found to be beneficial to an area's ability to attain and maintain the ozone

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[1] The Maricopa County ozone nonattainment area was redesignated nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] The State of Arizona was issued a finding of nonsubmittal for the section 182(f) NO_x RACT requirements on April 21, 1993, and subsequently submitted a commitment on April 23, 1993 to adopt and submit the NO_x RACT rules. The commitment was submitted as an interim measure to satisfy the NO_x RACT requirements, and proposed that the Maricopa County Bureau of Air Pollution Control (MCBAPC) would develop the NO_x RACT rules for submittal in January 1994. The rules were to be developed at the same time that the Maricopa Association of Governments (MAG) was conducting UAM for the 1994 attainment demonstration requirements. If the UAM modeling showed that NO_x reductions would not contribute to attainment of the ozone standard, then Arizona would petition for a section 182(f) exemption from the NO_x RACT requirements.

[3] Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, dated September 17, 1993, entitled "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992", and a subsequent revision to this memorandum from John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards, issued on May 27, 1994, entitled, "Section 182(f) Nitrogen Oxides (NO_x) Exemptions—Revised Process and Criteria".

[4] "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans or Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act", November 24, 1993 (58 FR 62188).

[5] "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule", November 30, 1993 (58 FR 63214).

NAAQS. That is, a modeling-based exemption would last for only as long as the areas's modeling continues to demonstrate attainment without NO_X reductions from major stationary sources.

If EPA later determines that NO_X reductions are beneficial based on new photochemical grid modeling in an area initially exempted, the area would be removed from exempt status and would be required to implement the NO_X requirements, except to the extent modeling shows that the NO_X reductions are excess reductions.[7] A determination that the NO_X exemption no longer applies would mean that the NO_X general and transportation conformity provisions would again be applicable (see 58 FR 63214; 58 FR 62188; 59 FR 31238) to the affected area. The NO_X requirements would also re-apply, although some reasonable time period after the EPA determination may be provided for sources to meet the RACT limits. EPA expects this time period to be as expeditious as practicable, taking into account any current and applicable State or Federal regulations.

The subsequent modeling analyses alluded to above need not be limited to the purpose of demonstrating attainment in the 1994 SIP revisions. For example, future modeling might also be initiated to resolve issues related to transport of ozone and ozone precursors into downwind nonattainment areas. State or local officials might want to consider a strategy that phases in NO_X reductions only after certain VOC reductions are implemented. As improved emission inventories and ambient data become available, planning officials may choose to remodel. In addition, alternative control strategy scenarios might be considered in subsequent modeling analyses in order to improve the cost-effectiveness of the attainment plan.

EPA's exemption guidance provides that pursuant to the requirements of section 110(a)(2), States should consider evidence, such as photochemical grid modeling, which shows that granting the NO_X exemption would interfere with attainment or maintenance in downwind areas. The State of Arizona has not yet implemented NO_X RACT, and at the time of this notice, EPA has not received evidence from the Phoenix Area or any downwind areas that shows that granting the NO_X exemption for the Phoenix Area would interfere with attainment or maintenance in downwind areas.

Exemption Modeling Requirements

The policy documents cited above which contain guidance on the petition requirements state that the modeling performed for the petition should follow the *Guideline on Regulatory Application of the Urban Airshed Model*, EPA–450/91–013, July 1991, (UAM guideline). The UAM guideline describes procedures for the appropriate use of UAM, such as for attainment demonstrations required of all ozone nonattainment areas.

Section 182(f) of the CAA recognizes that although VOC and NO_X emissions are both precursors to ozone, in certain circumstances the reduction of NO_X emissions can actually increase ozone concentrations. This occurs because two competing groups of chemical reactions are affected by NO_X. NO_X emissions reduction reduces one of the basic materials needed for ozone production, but it also enhances the formation of hydrocarbon radicals, thus increasing another basic ozone ingredient. Which effect dominates, if any, depends on the ratio of VOC to NO_X in the atmosphere, temperature, and other factors. The atmosphere is said to be "NO_X-limited" if NO_X reductions decrease peak ozone concentrations, and "VOC-limited" if NO_X reductions increase peak ozone concentrations. UAM can simulate ozone photochemistry to determine the effects of VOC and NO_X emission reductions on ozone. Therefore, if these simulations demonstrate that NO_X emission reductions are of no benefit or are counter-productive, then an exemption under section 182(f) would apply.

The NO_X exemption guidance sets forth two possible tests for showing that NO_X emission reductions are of no benefit or are counter-productive to ozone attainment for areas outside the OTR. The petition must show that one or both of these tests is/are passed.

(i) *Net air quality benefit:* Show that the required NO_X reductions from the potential exempted sources are counter-productive for overall air quality, primarily considering the modeled effect on the number of ozone NAAQS exceedances. Also considered are welfare, visibility, toxic pollutants, the effect on secondary PM_{10} formation, etc. This must include UAM modeling reflecting an area's submitted ozone attainment demonstration, with adopted control measures.

(ii) *Contribute to attainment:* This test uses UAM modeling to show that substantial reductions of VOC emissions result in lower ozone levels than substantial reductions of NO_X emissions AND combined reductions of VOC and NO_X emissions.[8] The maximum one-hour ozone concentrations from these three scenarios are then compared. These three UAM simulations need not be tied to an actual attainment demonstration[9], but the modeled "NO_X reductions should be as source-specific as possible, rather than across-the-board" (p.27), and should reflect "baseline" NOx reductions that are expected to occur without the exemption.

The UAM guideline describes procedures for applying UAM, such as choosing ozone episodes and the geographical domain to model, setting emissions and meteorological inputs, setting boundary conditions to the model, and evaluating the model's performance. The reliance of the NO_X exemption guidance on the UAM guideline is intended to ensure that the model is used in a scientifically appropriate manner. Portions of the UAM guideline that are specific to SIP attainment demonstrations may not always be applicable to modeling used specifically for NO_X exemptions.

Description of Submitted Petition

The petition submitted by the ADEQ first briefly describes the methodology used. Then, citing UAM modeling results of simulations required for the chosen exemption test (the contribute to attainment test), it concludes that the test is passed. In an appendix (Exhibits 1–4), the petition notes revisions to the emission inventory input made after the cited *Addenda to the MAG 1993 Ozone Plan for the Maricopa County Area* was prepared, and includes descriptions and graphs of UAM modeling performance indicators and concentration results cited in the main text.

The contribute to attainment test applied in the petition requires a showing that substantial reductions of VOC yield a lower ozone peak than do reductions of NO_X, and of both VOC and

[6] The section 182(f) exemption is explicitly referred to and is described in similar language in 40 CFR 51.394(b)(3)(i), the "Applicability" section of the transportation conformity rule, and in the preamble (see 58 FR 62197, November 24, 1993). The language is repeated in the provisions of the rule regarding the motor vehicle emissions budget test [section 51.428(a)(1)(ii)] and the "build/no-build" test [sections 51.436(e), 51.438(e)], although section 182(f) of the Act is not specifically mentioned. In the general conformity rule, the section 182(f) NO_X exemption is referred to in section 51.852 (definition of "Precursors of a criteria pollutant") and is discussed in the preamble (see 58 FR 63240, November 30, 1993).

[8] "Substantial VOC reduction" means that required to show attainment, and "substantial NOx reduction" means a similar percentage reduction.

[9] If an exemption is being requested for only certain NO_X sources, then the chosen test is to determine whether just the "excess emission reductions" from these sources would be counter-productive; in this case, the test must be tied to an actual submitted attainment demonstration.

NO_X. In order to make the modeling as source-specific as possible (required by the exemption guidance), UAM simulations were also performed to examine the effects of possible NO_X RACT reductions at specific NO_X sources in the Maricopa County nonattainment area.

The ozone episodes chosen for modeling were the August 9–10, 1992 episode, which is the base case modeling described in Exhibit 2 (of the petition) in an abbreviated form, and the June 13–14, 1993 episode. The petition notes that there is only a single meteorological regime associated with ozone NAAQS violations in Phoenix, due to stable weather patterns, its "island" location which isolates the area from other urban complexes, and its generally even distribution in size and location of NO_X emissions throughout the area. The reduction levels chosen for the three 1996 modeled scenarios for each simulation are as follows:

Episode 1

(1) A 20% VOC reduction, and a 0% NO_X reduction;

(2) a 0% VOC reduction, and a 60% NO_X reduction; and

(3) a 40% reduction of both VOC and NO_X.

The results of these reduction simulations are described and illustrated in Exhibit 1 of the petition. The ozone peaks are 11.9 parts per hundred million (pphm), 16.5 pphm, and 12.8 pphm, respectively. Since the 11.9 pphm value, corresponding to the VOC-only reduction, is the lowest, the test is passed. Also noted for this scenario is the lowest area covered by high ozone concentrations.

Episode 2

(1) A 20% VOC reduction, and a 0% NO_X reduction;

(2) a 0% VOC reduction, and a 20% NO_X reduction; and

(3) a 20% reduction of both VOC and NO_X.

The results of these reduction simulations are described and illustrated in attachment 1 of the Technical Support Document (TSD). The ozone peaks are 11.1 pphm, 14.6 pphm, and 13.0 pphm, respectively. Since the 11.1 pphm value, corresponding to the VOC-only reduction, is the lowest, this test is also passed.

The petition also describes modeling of 1996 emissions (including adopted and committed control measures), with and without RACT applied to specific NO_X sources (this modeling is explained in attachment 1 of the TSD). Exhibit 1 of the petition states that the total NO_X reductions from potential NO_X RACT measures for the August episode is 50.6% of the large point source emissions, or 5.4% of the total NO_X emissions for the second day of the ozone episode (August 10). These yielded a 0.1 pphm ozone increase. For the June episode, with a 52.5% reduction in elevated point source NO_X emissions and a 6.9% reduction in total NO_X emissions, the results showed no impact on the maximum simulated concentration. As referred to above, a more detailed discussion of the petition can be found in the Technical Support Document, dated October 1994.

Evaluation of Submitted Petition

The petition correctly utilizes an appropriate test from the NO_X exemption guidance. The "contribute to attainment" test is available to nonattainment areas outside an OTR, and need not be tied to an adopted and submitted attainment demonstration.

The single meteorological regime and the August 9–10, 1992 and June 13–14, 1993 ozone episodes used in the three required reduction scenarios are described in the modeling protocol used for the Phoenix Area's ozone attainment demonstration due November 15, 1994. For attainment demonstrations, the UAM guideline requires an area with a single regime to model three episodes of that meteorological type. The intent in requiring that the UAM guideline be followed is to ensure that the UAM is utilized in a scientifically appropriate manner and to ensure that multiple meteorological regimes are addressed, if necessary. However, in cases where an area is using intensive data from a field study, a minimum of two episodes is acceptable. This is appropriate where a field study is conducted that provides more comprehensive data for the modeling analysis. The field study was conducted during the summer of 1992 and provided more air quality and meteorological data than is routinely available.

Since 1996 is the required attainment year for a moderate ozone nonattainment area, the 1996 year is appropriate for use in the analysis using UAM simulations.

The NO_X and VOC reduction levels used in the test were "substantial" within the meaning of the exemption guidance, and provide a reasonable basis for comparisons of their effect on ozone. The additional simulations of NO_X RACT reductions at specific sources meet the exemption guidance requirement that the test be as source-specific as possible, and further substantiate the conclusion that implementation of NO_X RACT for major stationary sources would not contribute to attainment.

EPA Proposed Action

This action proposes to exempt the Phoenix ozone nonattainment area from implementing the NO_X RACT requirements and the general and transportation conformity regulations for NO_X. It is based on UAM modeling for two episodes in the Phoenix area which demonstrate that NO_X reductions do not contribute to attainment. The final action on this proposal will serve as a final determination that the finding of nonsubmittal for the NO_X RACT requirements has been corrected and that on the effective date of the final action on this proposal, any Federal Implementation Plan (FIP) clock is stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for a section 182(f) exemption shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

This exemption action does not create any new requirements, but allows suspension of the indicated requirements for the life of the exemption. Therefore, because the proposed approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 1994. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule.

This action may not be challenged later in proceedings to enforce its requirements. Section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 25, 1994.

Carol M. Browner,

Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Subpart D is proposed to be amended by adding § 52.235 to read as follows:

§ 52.235 Control strategy for ozone: Oxides of nitrogen.

EPA is approving an exemption request submitted by the State of Arizona on April 13, 1994 for the Maricopa County ozone nonattainment area from the NO_X RACT requirements contained in section 182(f) of the Clean Air Act. This approval exempts the area from implementing reasonably available control technology (RACT) for major stationary sources of nitrogen oxides (NO_X) and the NO_X related requirements of general and transportation conformity regulations. The exemption is based on Urban Airshed Modeling as would last for only as long as the area's modeling continues to demonstrate attainment without NO_X reductions from major stationary sources.

[FR Doc. 94–27018 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TN–125–1–6395b; FRL–5095–7]

Approval and Promulgation of Implementation Plans, Tennessee: Approval of Revisions to the Knox County Operating Permit Regulations for Synthetic Minor Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the revisions to the Knox County portion of the Tennessee State implementation plan (SIP) submitted by the State of Tennessee for the purpose of incorporating rules for the permitting of minor sources. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rational for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by December 1, 1994.

ADDRESSES: Written comments should be addressed to Yolanda Adams of the EPA Regional Office at the address listed below. Copies of the material submitted by Knox County, Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

Knox County Department of Air Pollution Control, City/County Building, suite 459, 400 Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–2864.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: October 6, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–27074 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AZ 37–1–6592b; FRL–5099–6]

Approval and Promulgation of State Implementation Plans; Arizona State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) which concern the control of emissions of volatile organic compounds (VOCs) from the transfer of gasoline into motor vehicle fuel tanks. On May 27, 1994, Arizona submitted a SIP revision request to EPA to satisfy the requirement of section 182(b)(3) of the Clean Air Act, as amended in 1990 (CAA or the Act), which requires all ozone nonattainment areas classified as moderate or worse to require owners and operators of gasoline dispensing facilities to install and operate stage II vapor recovery equipment. In the Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by December 1, 1994.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the regulation and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted regulation are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Arizona Department of Weights and Measures, 1951 West North Lane, Phoenix, Arizona 85021.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns Arizona Administrative Code Title 4, Chapter 31, Article 9 (R4–31–901 through R4–31–910), submitted to EPA on May 27, 1994 by the Arizona Department of Environmental Quality. For further information, please see the information provided in the direct final action which is located in the rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 23, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–27076 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–122, RM–8513]

Radio Broadcasting Services; Atlantic and Glenwood, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Valley Broadcasting, Inc., seeking the reallotment of Channel 279C from Atlantic to Glenwood, IA, and the modification of Station KXKT's license to specify Glenwood as its community of license. Channel 279C can be allotted to Glenwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.6 kilometers (15.3 miles) north of Glenwood, at coordinates 41–15–49 North Latitude and 95–46–21 West Longitude, to accommodate petitioner's desired transmitter site. In compliance with § 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 279C at Glenwood.

DATES: Comments must be filed on or before December 19, 1994 , and reply comments on or before January 3, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, a follows: John M. Pelkey, Esq., Susan H. Rosenau, Esq., Haley, Bader & Potts, Suite 900, 4350 North Fairfax Drive, Arlington, VA 22203–1633 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–286, adopted October 18, 1994, and released October 26, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–26961 Filed 10–31–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 210
Tuesday, November 1, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after October 31, 1994. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephen Solem; Regional Appeals Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana:

The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington:

The Spokesman Review.

Regional Forester decisions in North Dakota:

Bismarck Tribune.

Beaverhead—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribune
Custer—Billings Gazette (Montana); Bismarck Tribune (North Dakota); Rapid City Journal (South Dakota)
Deerlodge—Montana Standard
Flathead—Daily Interlake
Gallatin—Bozeman Chronicle
Helena—Independant Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Interlake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: October 25, 1994.

John M. Hughes,

Deputy Regional Forester.

[FR Doc. 94–26981 Filed 10–31–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Postponement of Preliminary Antidumping Duty Determination: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: John Brinkmann (202–482–5288) or Michelle Frederick (202–482–0186), Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230.

POSTPONEMENT OF PRELIMINARY DETERMINATION: The Department of Commerce ("the Department") is postponing the preliminary determination in the antidumping duty investigation of canned pineapple fruit from Thailand. The deadline for issuing this preliminary determination is now no later than January 4, 1995.

On June 28, 1994, the Department initiated an antidumping duty investigation of canned pineapple fruit from Thailand (59 FR 34408, July 5, 1994). The notice stated that we would issue our preliminary determination on November 15, 1994.

On July 25, 1994, the U.S. International Trade Commission determined that there was a likelihood that a U.S. domestic industry was materially injured, or threatened with material injury, by reason of imports of canned pineapple fruit from Thailand.

On October 21, 1994, pursuant to 19 CFR 353.15(c), Maui Pineapple Co., Ltd. and the International Longshoremen's and Warehousemen's Union, the petitioners, requested that the Department postpone until January 4, 1995, the issuance of its preliminary determination in the above investigation in order to allow the Department the opportunity to include a sales below the cost of production analysis in the calculation of dumping margins at the preliminary determination. Petitioners' request for postponement was timely, and the Department finds no compelling reasons to deny the request. Therefore, we are postponing the deadline for issuing this determination until no later than January 4, 1995.

This notice is published pursuant to section 733(c)(2) of the Tariff Act of 1930, as amended, and 19 CFR 353.15(d).

Dated: October 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27061 Filed 10–31–94; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's Visiting Committee on Advanced Technology (NIST) will meet on Tuesday, December 6, 1994, from 8:30 a.m. to 5:00 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on NIST programs; the Advanced Technology Program: progress report, planning, and management; and a discussion of the Institute budget.

Discussions on the NIST budget, including funding of the Applied Technology Program and the staffing of management positions at NIST scheduled to begin at 4:00 p.m. and to end at 5:00 p.m. on December 6, 1994, will be closed.

DATES: The meeting will convene December 6, 1994, at 8:30 a.m. and will adjourn at 5:00 p.m. on December 6, 1994.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, NIST, Gaithersburg, Maryland 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determine on August 2, 1994, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the ATP and the MEP Programs may be closed in accordance with 5 U.S.C. 552(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: October 26, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–27066 Filed 10–31–94; 8:45 am]

BILLING CODE 3510–13–M

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, December 7, and Thursday, December 8, 1994, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on December 7 and 8, 1994, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 22091.

AGENDA:

—Welcome and Update
—Overview of Meeting
—Common Criteria Activities
—Cryptographic Updates
—Congressional Updates
—Governmentwide E-Mail
—Generally (Accepted) System Security Principle's Update
—Public Participation
—Pending Board Business
—Close

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by December 1, 1994. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: October 26, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–27067 Filed 10–31–94; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Visa Stamp for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

October 27, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs authorizing the use of a new visa stamp.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Beginning on November 1, 1994, the Government of the Republic of Hungary will begin issuing a new export visa stamp for shipments of textile products, produced or manufactured in Hungary and exported from Hungary on or after November 1, 1994. There will be a two-month grace period, from November 1, 1994 through December 31, 1994, during which goods exported from Hungary may be accompanied by either the old or new export visa stamp. Goods exported from Hungary on or after January 1, 1995 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is on file at the U.S. Department of

Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room 3104, Washington, DC.

See 49 FR 8659, published on March 8, 1984.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 5, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain wool and man-made fiber textile products, produced or manufactured in Hungary for which the Government of the Republic of Hungary has not issued an appropriate visa.

Effective on November 1, 1994, you are directed to amend further the directive dated March 5, 1984, to provide for the use of a new visa stamp to accompany shipments of textile products, produced or manufactured in Hungary and exported from Hungary on or after November 1, 1994. Goods produced or manufactured in Hungary and exported from Hungary during the period November 1, 1994 through December 31, 1994 shall be permitted entry if accompanied by either the old or new visa stamp. Merchandise exported from Hungary on or after January 1, 1995 which is not accompanied by the new visa stamp shall be denied entry. A facsimile of the new visa stamp is enclosed with this letter.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27060 Filed 10–31–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Colombia

October 27, 19994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65579, published on December 15, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated October 15, 1993, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of wool textile products, produced or manufactured in Colombia and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 3, 1994, you are directed to amend the December 9, 1994 directive to increase the limit for Category 443 to 123,537 numbers [1], as provided under the terms of the Memorandum of Understanding dated October 15, 1993 between the Governments of the United States and the Republic of Colombia.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27059 Filed 10–31–94; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1993.

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Development of Safety Standard for Protective Batting Helmets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition from the American Academy of Facial Plastic and Reconstructive Surgery which requests the Commission to develop a safety standard for protective batting helmets intended for use by children under age 15 that would require these helmets be manufactured with a face guard. The Commission solicits written comments concerning the petition.[1]

DATES: Comments on the petition should be received in the Office of the Secretary by January 3, 1995.

ADDRESSES: Comments on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments should be captioned "HP 95–1, Petition for Development of Safety Standard for Protective Batting Helmets."

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800.

SUPPLEMENTARY INFORMATION: The Commission has docketed correspondence from the American Academy of Facial Plastic and Reconstructive Surgery ("the Academy") which requests that the Commission develop a safety standard for protective batting helmets intended for children under 15 years of age as a petition for rulemaking under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*). The Commission is docketing the petition under the Federal Hazardous Substances Act because that statute

[1] The Commission approved publication of this notice by a vote of 2–0.

addresses products intended for children that present a mechanical hazard and is thus the more appropriate statute. (15 U.S.C. 1261 *et seq.*)

The petition asks that the requested standard require all protective batting helmets intended for the use of children under 15 years of age be manufactured with a face guard that conforms to Standard F910 of the American Society for Testing and Materials ("ASTM"). The Academy asserts that use of batting helmets without face guards by children under the age of 15 creates an unreasonable risk of injury. The petition includes two articles from the journal "Pediatrics" which state that batting-related injuries are a leading cause of sports-related eye injuries and that the Sports Eye Safety Committee of the National Society to Prevent Blindness has endorsed requiring face guards with batting helmets. The petition also includes a copy of the ASTM standard F910.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, room 419, 4330 East West Highway, Bethesda, Maryland.

Dated: October 27, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–27064 Filed 10–31–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Public Notice for the Wyoming Valley Levee Raising Project, Luzerne County, PA; Phase II General Design Memorandum

AGENCY: U.S. Army Corps of Engineers, Baltimore District, DOD.

ACTION: Public notice.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers, Baltimore District, is conducting public coordination regarding the proposed Wyoming Valley Levee Raising Project, Luzerne County, Pennsylvania. The purpose of the levee raising project is to modify the existing four flood protection projects to provide protection against a reoccurrence of a flood equal to that caused by Tropical Storm Agnes in June 1972. The proposed project consists of the raising of levees and floodwalls an average of 3 to 5 feet, appurtenant features, and structural and non-structural mitigation measures for adverse increased flood impacts. The project was authorized under Section 401(a) of the 1986 Water Resources Development Act. Luzerne County will be the non-Federal sponsor of this project.

DATES: Comments must be received not later than December 16, 1994.

ADDRESSES: Commander, U.S. Army Corps of Engineers, Baltimore District, CENAB–PL–EC, P.O. Box 1715, Baltimore, MD 21203–1715.

FOR FURTHER INFORMATION CONTACT: Mr. Richard R. Starr, (410) 962–4633.

SUPPLEMENTARY INFORMATION: The Baltimore District, U.S. Army Corps of Engineers has prepared a Phase II General Design Memorandum (GDM) which has evaluated an increased level of protection for the existing flood protection systems along the Susquehanna River in the Wyoming Valley of Luzerne County in the vicinity of Wilkes-Barre, Pennsylvania. Additionally, the study evaluated increased flooding due to the proposed project and alternative solutions for this problem in areas upstream and downstream in Lackawanna, Luzerne, Columbia, Montour, Northumberland, and Snyder Counties. A Supplemental Environmental Impact Statement (SEIS) has been prepared as part of the Phase II GDM to document changes in the project actions, existing conditions and project effects which were described in the Final Environmental Impact Statement (FEIS) prepared for the Phase I GDM in 1981.

The decision to implement these actions will be based on an evaluation of the probable impact of the proposed activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal will be balanced against its reasonably for foreseeable detriments. All factors which may be relevant to the proposal, including the cumulative effects thereof, will be considered; among these factors are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and the general needs and welfare of the people.

Initial evaluation of the levee raising project indicates that the overall quality of the study area will be maintained with exception to some social impacts caused by the increased flooding; environmental impacts to a 0.38 acre river fringe emergent wetland; and cultural impacts to one archeological site and two architectural structures. Mitigation plans have been developed for all of these impacts. The evaluation of the potential effects of the proposed projects has included: Cultural resources; hazardous, toxic and radioactive waste; terrestrial resources; aquatic resources; wetlands; threatened and endangered species; aesthetics; recreation, and the general needs and welfare of the public. Only minor impacts to aquatic resources are expected to occur as a result of limited fill activities in waters of the United States. No significant adverse impacts are expected to occur, other than the ones mentioned above, to cultural resources, wetlands, terrestrial habitat areas or listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act.

An evaluation of the proposed actions on waters of the United States was performed pursuant to the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under the authority of Section 404 of the Clean Water Act. The Section 404(b)(1) evaluations and other preliminary analyses indicate that the proposed project will result in no significant adverse impacts to the aquatic ecosystem, recreation, aesthetics, flood protection or economic values of the waterways. The U.S. Army Corps of Engineers, Baltimore District, has requested a Section 401 water quality certification from the Commonwealth of Pennsylvania for the levee raising project. Any comment relating to water quality concerns should be forwarded to the Commonwealth of Pennsylvania, Bureau of Dams, Waterways and Wetlands, North Central Office, 200 Pine Street, Williamsport, Pennsylvania 17701, within 30 days of receipt of this notice.

In accordance with NEPA and the Clean Water Act, the Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials, and other interested parties in order to consider and evaluate the impacts. Any comments received will be considered by the Corps of Engineers in the decision to implement the proposed project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest

factors listed above. Comments regarding the levee raising project will be incorporated in the SEIS pursuant to NEPA. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. This public notice is being sent to organizations and individuals known to have an interest in the project. Please bring this notice to the attention of any other individuals with an interest in this matter.

Any person who has an interest in the project may make comments and/or request a public hearing. Comments must clearly set forth the interest which may be adversely affected by this activity and the manner in which the interest may be adversely affected. Written comments and requests must be submitted within 45 days of the date of this notice in the **Federal Register**.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–26982 Filed 10–31–94; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 1, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 25, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Extension.

Title: Standards, Criteria, and Procedures Governing the Repayment and Consolidation of Loans Under the Direct Loan Program.

Frequency: One time.

Affected Public: Individuals or households; non-profit institutions; business or other for-profit.

Reporting Burden:

Responses: 62,068

Burden Hours: 27,218.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: On August 10, 1993, the Student Loan Reform Act of 1993 (P.L. 103–66) was enacted. The legislation authorized the Federal Direct Student Loan Program to make loans beginning July 1, 1994. On July 1, 1994 the regulations implementing the Consolidation Loan Process were published. The Repayment and Consolidation rules satisfies the requirements needed for the first year of this program.

[FR Doc. 94–26969 Filed 10–31–94; 8:45 am]

BILLING CODE 4000–01–M

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of Public Meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATES: November 21, 1994, from 1:00 p.m. to 4:30 p.m.

ADDRESSES: Hubert H. Humphrey Building, Room 703A/727A, 200 Independence Avenue, S.W. Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4613, Switzer Building, Washington, D.C. 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal

agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) update the membership on the SSI children's disability program; and (2) discuss the results of the community survey on integration and continuity of services for children with special needs.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4613, Switzer Building, Washington, D.C. 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–26949 Filed 10–31–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Deviation To Permit Use of Fixed Obligation Awards

AGENCY: Department of Energy.

ACTION: Notice of Class Deviation.

SUMMARY: The Department of Energy (DOE), pursuant to 10 CFR 600.4, hereby announces a deviation from its Financial Assistance Rules to permit, for a two (2) year pilot period, the issuance of certain assistance awards on a "fixed obligation" basis. This deviation is considered to be necessary to conserve public funds, and essential to the public interest. The deviation will reduce administrative requirements involved in the management of grants and will streamline the award of financial assistance actions by the Department.

FOR FURTHER INFORMATION CONTACT: E. Stephen Logan, Office of Management Review and Analysis (HR–523), U.S. Department of Energy, 1000 Independence Avenue. S.W., Washington, DC 20585, (202) 586–9048.

EFFECTIVE DATE: November 16, 1994.

SUPPLEMENTARY INFORMATION: In this notice, the Department of Energy announces that, pursuant to 10 CFR part 600, the Deputy Assistant Secretary for Procurement and Assistance Management has made a determination of the need for a class deviation to the Department's Financial Assistance Rules. A deviation to 10 CFR 600.109 has been approved which provides that for certain assistance awards incurred costs will not be subject to regulation by the standards of cost allowability. This deviation is necessary to allow the award of certain assistance instruments on a "fixed obligation" basis. A fixed obligation award is one for which a fixed amount of funds are issued in support of a project without a requirement for Federal monitoring of actual costs subsequently incurred. It is intended for use in support of projects in which there is certainty about the cost, and in which the accomplishment of the purpose of the award is readily discernible such as conferences, workshops, equipment, travel, etc. It is noted that the Financial Assistance Rules permit use of fixed obligation awards under Phase I of the Small Business Innovative Research Program. This current deviation will expand the use of the fixed obligation award concept for a pilot period of two years. Programs which require mandatory cost sharing are not eligible for fixed obligation awards.

The Contracting Officer must determine the appropriateness of issuance of a fixed obligation award. In making this determination, the following factors are considered: (1)(A) The certainty that the funds requested will be the actual cost of the effort so that funds will not be remaining upon completion of the project or (1)(B) if there cannot be certainty about the actual cost of the project, then the certainty that the award is definitely less than the total actual cost of the project; (2) the possibility of making the evaluation involved in (1) above, if there are likely to be changes in the project; and (3) the ability to easily identify accomplishments or results. The use of a fixed obligation award must also be consistent with programmatic requirements. Each fixed obligation award may not exceed $100,000 or exceed one year in length.

The following administrative standards shall apply to all fixed obligation awards: (1) Proposed costs must be analyzed in detail to ensure consistency with applicable cost principles; (2) although budgets are submitted by a recipient and reviewed for purposes of establishing the amount to be awarded, budget categories are not stipulated in making an award; (3) prior approval for rebudgeting among categories by the recipient is not required; (4) payments will be made in the same manner as other financial assistance awards (see Section 600.112), except that when determined appropriate by the cognizant program official and contracting officer a lump sum payment may be made; (5) recipients must certify in writing to the contracting officer at the end of the project that the activity was completed or the level of effort was expended, however, should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements; (6) requirements for periodic reports may be established for each award so long as they are consistent with Section 600.115; and (7) changes in principal investigator or project leader, scope of effort, or institution, require the prior approval of the Department.

Issued in Washington, DC, September 27, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 94–27054 Filed 10–31–94; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on Human Radiation Experiments

AGENCY: U.S. Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463,86 Stat. 770), notice is hereby given of the Advisory Committee on Human Radiation Experiments meeting.

DATES AND TIMES:

November 14, 1994, 9:00 a.m.–5:00 p.m.
November 15, 1994, 9:00 a.m.–5:00 p.m.

PLACE: Renaissance Hotel, 999 9th Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW, Suite 600, Washington, DC 20036. Telephone: (202) 254–9795 Fax:(202) 254–9828

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The Advisory Committee on Human Radiation Experiments was established

by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Monday, November 14, 1994
- 9:00 a.m. Call to Order and Opening Remarks
- 9:10 a.m. Discussion, Status and Strategies of Document Collection and Review
- 12:15 p.m. Lunch
- 1:15 p.m. Subcommittee Reports
- 5:00 p.m. Meeting Adjourned

Tuesday, November 15, 1994
- 9:00 a.m. Opening Remarks
- 9:10 a.m. Subcommittee Reports (continued)
- 10:45 a.m. Public Comment (5 minute rule)
- 12:15 p.m. Lunch
- 1:45 p.m. Discussion, Committee Strategy and Direction
- 5:00 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a five-minute oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript

Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 27, 1994.

Rachel M. Samuel,

Acting Advisory Committee Manager Officer.

[FR Doc. 94-27053 Filed 10-31-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. MG91-1-006]

National Fuel Gas Supply Corp., Notice of Filing

October 26, 1994.

Take notice that on October 12, 1994, National Fuel Gas Supply Corporation (National) filed revised standards of conduct pursuant to Order Nos. 497 *et al.*[1] and Order No. 566.[2]

National further states that copies of this filing were served upon its customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214 (1994). All such motions to intervene or protest should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-26966 Filed 10-31-94; 8:45 am]

BILLING CODE 6717-01-M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497-A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497-D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497-E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497-F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497-G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994), Order No. 566-A, *order on rehearing*, 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

[Docket No. RS92-86-016, et al.]

Transcontinental Gas Pipe Line Corp.; Notice of Request for Initiation of a Complaint Proceeding

October 26, 1994.

Take notice that on January 18, 1994, Fina Natural Gas Company (Fina), P.O. Box 2159, Dallas, Texas 77002-6760, filed a request for the initiation of a complaint proceeding under Section 5 of the Natural Gas Act (NGA) and the consolidation of such complaint proceeding with the issues pending in Phase II of the consolidated hearing in Docket Nos. RP92-137-016 and RP93-136.

Fina states that a December 17, 1993, order in Transcontinental Gas Pipe Line Corporation's (Transco) restructuring proceeding denied Fina's request to examine the functionalization of Transco's production-area facilities for jurisdictional and/or rate design purposes in the proceedings in Docket Nos. RP92-137-016 and RP93-136. Fina states that the Commission concluded that any need for refunctionalization of Transco's facilities was not germane to the unbundling of rates. The order also stated that parties dissatisfied with the current functionalization of Transco's facilities could file a complaint, but that the Commission would not delay Transco's current rate proceedings with a reexamination of the primary function of its facilities.

On January 18, 1994, Fina requested rehearing of the order or, alternatively, establishment of a complaint proceeding under Section 5 and the consolidation of the complaint proceeding with the issues in the pending Section 4 rate cases in Docket Nos. RP92-137-016 and RP93-136. Fina contends that in its March 17, 1994, restructuring order, the Commission denied Fina's request for rehearing. However, Fina submits that the Commission stated the arguments and information submitted by Fina warrant further consideration to determine whether there is sufficient justification to initiate a complaint proceeding and deferred action on Fina's request until the Commission completed its review of Fina's presentation. The Commission further stated that if it determined that a Section 5 proceeding should be initiated, it would issue a notice

establishing a separate docket number for such proceeding.

On July 21, 1994, Fina requested expedited action on its request for the initiation of a complaint proceeding against Transco under NGA Section 5 and the consolidation of such complaint proceeding with issues pending in Phase II of the hearing in Transco's current rate proceedings in Docket Nos. RP92–137–016 and RP93–136.

Fina maintains that it has shown that, under the modified primary function test, some of Transco's production-area facilities have been misfunctionalized as transmission. Since the recent gathering orders revising the Commission's gathering policy indicate that the Commission will continue to give principal consideration to the modified primary function test factors when determining the proper functionalization of facilities for jurisdictional and rate design purposes, Fina argues, the Commission should grant its request for expedited action and initiate a complaint proceeding to investigate the functionalization of Transco's production-area facilities.

Fina asserts that, in its pleading, it has fully demonstrated the need to examine the functionalization of Transco's production-area facilities to assure all parties that Transco's rates are based on a proper categorization of facility costs between Transco's services. Fina submits that this inquiry is equally justified whether viewed as an exploration under NGA Section 1(b) to ensure proper functionalization of Transco's facilities or as an investigation under NGA Sections 4 or 5 to ensure that Transco's rates correctly reflect the actual functions performed by its production-area facilities, regardless of their jurisdictional functionalization.

Any person desiring to be heard or to make any protest with reference to said request for the initiation of a complaint proceeding should, on or before November 28, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint shall be due on or before November 28, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27008 Filed 10–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–267–000]

Wyoming Interstate Company, Ltd.; Notice of Informal Settlement Conference

October 26, 1994.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 1:00 p.m., on November 2, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street NE, Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2176 or John P. Roddy at (202) 208–1176.

Lois D. Cashell,

Secretary.

[FR Doc. 94–26967 Filed 10–31–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5100–5]

Notice of Public Water Supervision Program: Program Revision for the State of Connecticut

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Connecticut is revising its approved State Public Water Supply Supervision Primacy Program. Connecticut has adopted drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for public hearing must be submitted by December 1, 1994 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 1, 1994 a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on December 1, 1994. Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Connecticut Department of Health and Addiction Services, Water Supplies Section, 21 Grand Street, Hartford, CT 06106 and

U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, One Congress Street—11th Floor, Boston, MA 02203—2211.

FOR FURTHER INFORMATION CONTACT: Mark Sceery, U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, J.F.K. Federal Building, Boston, MA 02203–2211, Telephone (617) 565–3604.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1988); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Date: October 27, 1994.

John P. DeVillars,

Regional Administrator.

[FR Doc. 94–27017 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5099–7]

A Notice of Intent To Invite Proposals for the Environmental Education and Training Program

The purpose of this notice is to provide you with advance notice that the U.S. Environmental Protection Agency (EPA) intends to publish an "Invitation for Proposals" in the **Federal Register** in December 1994 to solicit proposals to operate the Environmental Education and Training Program. This notice is also intended to help EPA develop a mailing list for the distribution of the "Invitation for Proposals."

The purpose of the Environmental Education and Training Program is to train educational professionals to develop and deliver environmental education programs as authorized under section 5 of the National Environmental Education Act of 1990 (P.L. 101–619). Under this program, EPA awards a cooperative agreement with a three-year project period to an institution of higher education, a non-profit organization, or a consortia of such institutions.

This program was initiated in 1992 with the award of a cooperative agreement to the University of Michigan which developed and now leads the National Consortium for Environmental Education and Training (NCEET). EPA awarded $1.6 million in FY 1992, $1.8 million in FY 1993, and $2.0 million in FY 1994 to NCEET to implement this program. EPA encourages applicants for the second three-year phase of this program (1995–1997) to collaborate with existing programs, including NCEET. EPA expects the annual funding for this program to remain relatively constant over the next three years, subject to Congressional appropriations. For additional information on NCEET, please contact NCEET, School of Natural Resources, University of Michigan, Dana Building, Ann Arbor, Michigan, 48109–1115, 313–998–6726.

Specific guidelines and priorities on the functions and activities of the program as well as EPA's basis for evaluating proposals will be provided in the "Invitation for Proposals." No additional information on the training program will be available to the public until the "Invitation for Proposals" has been published in the **Federal Register**.

EPA's tentative schedule for this program is an follows:

- Publish "Invitation for Proposals" in the **Federal Register**: December 1994.
- Deadline for mailing applications: March 1995 (exact date to be announced).
- Award cooperative agreement: by September 30, 1995.

To be placed on the EPA mailing list to receive a copy of the "Invitation for Proposals," please call 202–260–3335 or write to: Kathleen MacKinnon, U.S. Environmental Protection Agency, Environmental Education Division (1707), Environmental Education and Training Program, 401 M Street, SW., Washington, DC 20460.

Dated: October 14, 1994.

Loretta M. Ucelli,

Associate Administrator, Office of Communications, Education and Public Affairs.

[FR Doc. 94–26991 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320.9.

October 25, 1994.

The Federal Communications Commission is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320.9, authority delegated to the Commission by the Office of Management and Budget (OMB) on October 6, 1994. These collections were all previously approved by OMB and are unchanged. Public comments are invited on any of these collections for a period ending December 1, 1994. Persons wishing to comment on these information collections should contact Dorothy Conway, Federal Communications Commission, 1919 M Street N.W. Room 242–B, Washington, DC 20554. You may also send comments via Internet to DConway@fcc.gov. Upon approval FCC will forward supporting material and copies of these collections to OMB.

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

OMB Number: 3060–0492
Title: Section 74.992 Access to channels licensed to wireless cable entities
Form Number: FCC Form 330
Action: Extension of a currently approved collection
Respondents: State or local governments, businesses or other for profit including small businesses, non-profit
Frequency of Response: On occasion
Estimated Annual Burden: 10 responses; 6.5 hours burden per response; 65 hours total annual burden
Needs and Uses: Section 74.992 requires that requests by Instructional Television Fixed and/or Response Station(s) (ITFS) entities for access to wireless cable facilities licensed on ITFS frequencies be made by filing FCC Form 330. The data is used by FCC staff to determine if an ITFS entity is eligible to demand access on the wireless cable facility.

OMB Number: 3060–0493
Title: Section 74.986 Involuntary ITFS station modification
Form Number: FCC Form 330
Action: Extension of a currently approved collection
Respondents: State or local governments; businesses or other for profit including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 20 responses; 8 hours burden per response; 160 hours total annual burden
Needs and Uses: Section 74.986 requires an application for involuntary modification of an ITFS station be filed on FCC Form 330. FCC staff uses the data to insure that ITFS licensees/permittees proposals to modify ITFS facilities would provide comparable ITFS service and serve the public interest in promoting the MMDS service.

OMB Number: 3060–0491
Title: Section 74.991 Wireless cable application procedures
Form Numbers: FCC Forms 330 and 494
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 100 responses; 4.33 hours burden per response; 433 hours total annual burden
Needs and Uses: Section 74.991 requires that a wireless cable application be filed on FCC Form 330, Sections I and V, with a complete FCC Form 494 appended. The application must include a cover letter clearly indicating that the application is for a wireless cable entity to operate on ITFS channels. FCC staff uses the data to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use.

OMB Number: 3060–0490
Title: Section 74.902 Frequency Assignments
Form Number: FCC Forms 330 and 327
Action: Extension of a currently approved collection

Respondents: State or local governments; businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 32 responses; 7.625 hours burden per response; 244 hours total annual burden
Needs and Uses: Section 74.902 requires that an MDS applicant files the appropriate application for suitable alternative spectrum when involuntarily displacing a point to point ITFS station operating on MDS channels E and F. FCC staff uses this data to insure that proposals to displace point to point facilities of ITFS stations would provide comparable point-to-point ITSF service and serve the public interest in promoting the MMDS service.

OMB Number: 3060–0494

Title: Section 74.990 Use of available instructional television fixed service frequencies by wireless cable entities
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 100 responses; 2 hours burden per response; 200 hours total annual burden
Needs and Uses: Section 74.990 requires a wireless cable applicant to show that there are no multipoint distribution service or multichannel distribution service channels available for application, purchase or lease that could be used in lieu of the instructional television fixed service frequencies applied for. This data is used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use.

OMB Number: 3060–0297
Title: 80.503 Cooperative use of facilities
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profit; non-profit institutions including small businesses
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 100 recordkeepers; 16 hours burden per recordkeeper; 1,600 hours total annual burden
Needs and Uses: Section 80.503 recordkeeping requirements are necessary to insure licensees which share private facilities operate within the specified scope of service, on a non-profit basis, and do not function as communications common carriers providing ship-shore public correspondence services. FCC Field Operations Bureau staff use the data during inspections and investigations to insure compliance with applicable rules.

OMB Number: 3060–0222
Title: 97.213 Remote control of a station
Action: Extension of a currently approved collection
Respondents: Individuals or households
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 500 recordkeepers; 12 minutes burden per recordkeeper; 100 hours total annual burden
Needs and Uses: Section 97.213 requires posting a photocopy of the station license, a label with the name, address and telephone number of the station license and the name of at least one authorized control operator. This facilitates quick resolution of any harmful interference problems in accordance with the Communications Act of 1934, as amended. FCC Field Operations Bureau staff use this information during inspections and investigations to assure that remotely controlled amateur radio stations are licensed in accordance with applicable rules, statutes and treaties.

OMB Number: 3060–0202
Title: Section 87.37 Developmental license
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profits; non-profit institutions including small businesses
Frequency of Response: Annual
Estimated Annual Burden: 12 responses; 8 hours burden response; 96 hours total annual burden
Needs and Uses: This requirement in Section 87.37 enables the FCC to gather data on the results of developmental programs conducted in the Aviation Services for which developmental authorizations have been issued. The data is used to determine whether developmental authorizations should be renewed and/or whether rule making proceedings should be initiated to include such operations within the normal scope of Aviation Services.

OMB Number: 3060–0197
Title: Section 87.31 Changes during license term
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profit; federal agencies or employees; non-profit institutions; small businesses or organizations
Frequency of Response: On occasion
Estimated Annual Burden: 100 responses; 1 hour burden per response; 100 hours total annual burden
Needs and Uses: This requirement in Section 87.31 is necessary to ensure name and/or address of licensee.
OMB Number: 3060–0264
Title: 80.413 On-board station equipment records
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profit; federal agencies or employees; non-profit institutions; small businesses or organizations
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 1,000 recordkeepers; 2 hours burden per recordkeeper; 2,000 hours total annual burden
Needs and Uses: The recordkeeping requirement in Section 80.413 is necessary to document the number and type of transmitters operating under an on-board station license. FCC Field Operations Bureau staff use the information during inspections and investigations to determine what mobile units and repeaters are associated with on-board stations aboard a particular vessel.
OMB Number: 3060–0132
Title: Supplemental Information 72–76 MHz Operational Fixed Stations
Form Number: FCC Form 1068A
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profit; non-profit institutions; small businesses or organizations
Frequency of Response: On occasion
Estimated Annual Burden: 300 responses; 30 minutes burden per response; 150 hours total annual burden
Needs and Uses: This collection is required to evaluate applicants for authorization in the Operational Fixed Private Land Mobile Stations in the 72–76 MHz frequency band.
OMB Number: 3060–0021
Title: Civil Air Patrol Radio Station License
Form Number: FCC Form 480
Action: Extension of a currently approved collection

Respondents: Non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 12 responses; 5 minutes burden per response; 1 hour total annual burden
Needs and Uses: FCC Form 480 is used by apply for a new, renewal or modified Civil Air Patrol Radio Station License. The data is used by the Commission personnel to evaluate the application to issue licenses, to provide information for enforcement and rulemaking proceedings and to maintain a current inventory of licensees.

OMB Number: 3060–0182
Title: Section 73.1620 Program Tests
Action: Extension of a currently approved collection
Respondents: Businesses or other for-profit; non-profit institutions including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 1,136 responses; 1.06 hours burden per response; 1,204 hours total annual burden
Needs and Uses: The notification to FCC regarding program tests (Section 73.1620(a)) alerts FCC that station construction is complete and that the station is ready to broadcast program material. The notification to UHF translator stations (Section 73.1620(f)) alerts the station that the potential for interference exists. The report to FCC regarding deviations (Section 73.1620(g)) ensure that comparative promises relating to services are not inflated.

OMB Number: 3060–0348
Title: Section 76.79 Records available for public inspection
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit including small businesses
Frequency of Response: Recordkeeping
Estimated Annual Burden: 2,150 recordkeepers; 2 hours burden per recordkeeper; 4,300 hours total annual burden
Needs and Uses: Section 73.79 requires that every cable employment unit with more than five full-time employees maintain, for public inspection a file containing copies of all annual employment reports and related documents. This data is used to assess the cable unit's equal employment opportunity (EEO) efforts.

OMB Number: 3060–0187
Title: Section 73.3594 Local public notice of designation for hearing
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 48 responses; 4 hours burden per response; 192 hours total annual burden
Needs and Uses: Section 73.3594 request that applicants of any AM, FM or TV broadcast station designated hearing must give notice of such designation. This notice must be given in a daily newspaper of general circulation published twice weekly for two consecutive weeks in the community in which the station is or will be located. This notice gives interested parties the opportunity to respond.

OMB Number: 3060–0488
Title: Section 73.30 Petition for authorization of an allotment in the 1605–1705 kHz band
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 500 responses; 2 hours burden per response; 1,000 hours total annual burden
Needs and Uses: Section 73.30 requires any party interested in applying for an AM broadcast station to be operated on the 1605–1705 band to first file a petition for the establishment of an allotment to its proposed community of service. FCC staff uses the data to determine whether applicants meet basic technical requirements to migrate to the expanded band.

OMB Number: 3060–0218
Title: Section 90.41(b) Disaster Relief Organization "Special eligibility showing"
Action: Extension of a currently approved collection
Respondents: Non-profit institutions; small businesses or organizations
Frequency of Response: On occasion
Estimated Annual Burden: 75 responses; 10 minutes burden per response; 13 hours total annual burden
Needs and Uses: Information used to establish the eligibility of disaster relief organizations to use Special Emergency Radio Service frequencies which are primarily used for emergency medical services. This is necessary to assure efficient communications operations.

OMB Number: 3060–0259
Title: Section 90.263 Substitution of Frequencies below 25 MHz
Action: Extension of a currently approved collection
Respondents: State or local governments; businesses or other for profit
Frequency of Response: On occasion
Estimated Annual Burden: 60 responses; 30 minutes burden per response; 30 hours total annual burden
Needs and Uses: Applicants proposing operation in certain frequency bands below 25 MHz must submit supplemental information showing such frequencies are necessary from a safety of life standpoint. FCC personnel uses this information to evaluate the applicants need for such frequencies and the interference potential to other stations operating on the proposed frequencies.

OMB Number: 3060–0295
Title: Sections 90.607(b)(1) & (c)(1) Supplemental information to be furnished by applicants for facilities under this subpart
Action: Extension of a currently approved collection
Respondents: State or local government; businesses or other for profit including small business
Frequency of Response: On occasion
Estimated Annual Burden: 2,028 responses; 15 minutes burden per response; 507 hours total annual burden
Needs and Uses: Applicants must submit a list of any radio facility they hold within 40 miles of the base station transmitter site being applied for. This information is used to determine if an applicant's proposed system is necessary in light of communications facilities it already owns. Such a determination helps the Commission to equitably distribute limited spectrum.

OMB Number: 3060–0221
Title: Section 90.155(b) Time in which station must be placed in operation (exceptions)
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profit, including small businesses; non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 55 responses; 1 hour burden per response; 55 hours total annual burden
Needs and Uses: state and local governments are must show a need if they require longer than eight months to place a station in operation. Commission licensing staff use the information to determine if an exception to the eight month requirement is warranted.

OMB Number: 3060–0173
Title: Section 73.1207 Rebroadcasts
Action: Extension of a currently approved collection

Respondents: Businesses or other for profit, including small businesses non-profit institutions
Frequency of Response: Recordkeeping
Estimated Annual Burden: 1,012 recordkeepers; 30 minutes burden per recordkeeper; 506 hours total annual burden
Needs and Uses: Section 73.1207 requires licensees of broadcast stations to obtain written permission from an originating station prior to retransmitting any program or part thereof. A copy of the permission must be kept in the station's file and made available to the FCC upon request. This written consent assures the Commission that prior authorization for retransmission of a program was obtained.

OMB Number: 3060–0190
Title: Section 73.3544 Application to obtain a modified station license
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit, including small businesses; non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 272 responses; 1 hour burden per response; 272 hours total annual burden
Needs and Uses: Section 73.3544 requires broadcast licensees to file informal applications with FCC to obtain modified station license when prior authority is not required to make changes. FCC uses the data to ensure changes are in accordance with FCC rules and regulations and to issue a modified station license.

OMB Number: 3060–0489
Title: Section 73.37 Applications for broadcast facilities, showing required
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 210 responses; 4.86 hours per response; 1,021 hours total annual burden
Needs and Uses: Section 73.37(d) requires applicants for new or major change AM broadcast stations to make a satisfactory showing if new or modified nighttime operations by a Class B station is proposed. Section 73.37(f) requires applicants seeking facilities modifications that would result in spacing that fail to meet any of the separation requirements to include a showing that an adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model 1 facilities. The FCC staff uses the data to ensure that objectionable interference will not be caused to other authorized AM stations.

OMB Number: 3060–0346
Title: Section 78.27 License Conditions
Action: Extension of a currently approved collection
Respondents: Business or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 455 responses; 10 minutes burden per response; 76 hours total annual burden
Needs and Uses: Section 78.27 requires licensees of Cable Television Relay Service stations to notify the Commission when stations commence operation and to request additional time to complete construction when needed. FCC staff uses the data to provide accurate records of actual CARS channel usage for frequency coordination purposes.

OMB Number: 3060–0570
Title: Section 76.982 Continuation of Rate Agreements
Action: Extension of a currently approved collection
Respondents: State and local governments; businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 150 persons; 30 minutes burden response; 75 hours total annual burden
Needs and Uses: Section 76.982 provides that franchise authorities who were regulating basic cable rates pursuant to a rate agreement executed before July 1, may continue to regulate rates during the remainder of the agreement after notification to the FCC that it intends to do so. This notification will give the FCC information needed to assess impact of new regulatory scheme.

OMB Number: 3060–0314
Title: Section 76.209 Fairness doctrine, personal attacks, political editorials
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 1,312 responses; 2.6 hours burden per response; 3,411 hours total annual burden
Needs and Uses: Section 76.209(b) requires that a cable television system operator must notify a person or group on which a personal attack was made of the date, time and identification of the cablecast. They are to offer a script or tape of the attack and offer a reasonable opportunity to respond over the licensees facilities. Section 76.209(d) requires that when a cable television system operator in an editorial endorses or opposes a candidate, the licensee must notify the other qualified candidate(s) for the same office or the candidate opposed, of the date and time of editorial, provide a script or tape editorial and offer a reasonable opportunity to respond over the system's facilities.

OMB Number: 3060–0561
Title: Section 76.913 Assumption of jurisdiction by the Commission
Action: Extension of a currently approved collection
Respondents: State or local governments; federal agencies or employees
Frequency of Response: On occasion
Estimated Annual Burden: 500 responses; 8 hours burden per response; 4,000 hours total annual burden
Needs and Uses: Section 76.913 provides that a franchise authority that has insufficient resources to regulate rates or lacks the legal authority may petition the Commission to regulate the rates for basic cable service and associated equipment of its franchise. FCC uses the data to identify situations where it should exercise jurisdiction.

OMB Number: 3060–0447
Title: Section 25.134 Licensing Provisions of Very Small Aperture Terminal Network
Action: Extension of a currently approved collection
Respondents: Business or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 10 responses; 120 hours burden per response; 1,200 hours total annual burden
Needs and Uses: Section 25.134 requires applicants seeking higher satellite carrier power density to make certain showings including a copy of their engineering analyses output, accompanied with a narrative summary and also proof of consent to all potentially affected parties. The FCC uses this data to identify potential interference problems.

OMB Number: 3060–0560
Title: Section 76.911 Petition for reconsideration of certification
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 450 responses; 2 hours burden per response; 900 hours total annual burden

Needs and Uses: Section 76.911(b)(2) requires competing video programmers, when requested by cable operators to provide information regarding the competitor's research and number of subscribers. The information will be used by cable operators to rebut a franchising authority's certification to the FCC that the cable system is not subject to effective competition. FCC staff will use the data to achieve the goals of the Communications and Cable Acts, by ensuring that the threshold effective competition determination is based on a complete record and to resolve disputes concerning the presence or absence of effective competition.

OMB Number: 3060–0562

Title: Section 76.916, Petition for Recertification

Action: Extension of a currently approved collection

Respondents: State or local governments

Frequency of Response: On occasion

Estimated Annual Burden: 1,300 responses; 2.5 hours burden per response; 3,250 hours total annual burden

Needs and Uses: Section 76.916 provides that franchising authority wishing to assume jurisdiction to regulate basic service and associated equipment rates after its request for certification has been denied or revoked must file a "Petition for Reconsideration." If this collection was not conducted, such franchise authorities would not have the opportunity to establish their qualifications after their initial request for certification was denied or revoked.

OMB Number: 3060–0486

Title: Document Index Terms

Action: Extension of a currently approved collection

Respondents: Businesses or other for profit, including small businesses

Frequency of Response: On occasion

Estimated Annual Burden: 21,120 responses; .017 hours burden per response; 360 hours total annual burden

Needs and Uses: This information is used by the FCC to enter documents into the Commissions Records Imaging Processing System (RIPS). This system is used for storage and retrieval of docketed, rulemakings and petitions for Rulemaking proceedings. The data assists the public in assigning documents in the system.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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BILLING CODE 26712-01-M

Public Information Collection Requests Submitted to Office of Management and Budget for Review

October 21, 1994.

The Federal Communications Commission has submitted the following information collection requests to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3507. Persons wishing to comment on these information collection should contact Timothy Fain, Office of Management and Budget, Room 10102, NEOB, Washington, D.C. 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 418–0214.

Please Note: Pursuant to 5 CFR 1320.18, the Commission has requested expedited review of these collections by December 1, 1994.

Title: Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization.

Form No.: FCC 600.

OMB Control No.: None.

Action: New collection.

Respondents: Individuals, State or local governments, Non-profit institutions, Business or other for-profit, including small businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 151,000 respondents; average 4 hours per respondent; 604,000 hours total annual burden.

Needs and Uses: FCC Form 600 is filed by applicants applying for a new or modified authorization to provide or use commercial, private, both commercial and private, or fixed service. The data is used to determine eligibility, for rulemaking proceedings, enforcement purposes and for resolving treaty obligations.

Title: Notification of Commencement of Service or of Additional or Modified Facilities.

Form No.: FCC 489.

OMB Control Number: 3060–0318.

Action: Revised collection.

Respondents: Business or other for profit, including small businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 10,000 respondents; average 3.62 hours per response; 36,200 hours total annual burden.

Needs and Uses: FCC 489 is a multi-purpose form used by commercial mobile radio service providers to notify the Commission of commencement of service, satisfaction of construction requirements, additional transmitters, minor modifications to stations and for certain other miscellaneous purposes. FCC 489 is used by the Commission to verify compliance with construction and service requirements and to update the database.

Title: Application for Assignment of Authorization or Consent to Transfer of Control of License.

OMB Control Number: 3060–0319.

Action: Revised Collection.

Respondents: Business or other for profit, including small business.

Frequency of Response: On occasion.

Estimated Annual Burden: 5,000 respondents; average 3 hours per response; 15,000 hours total annual burden.

Needs and Uses: FCC 490 is filed to solicit Commission approval to assign a radio station authorization to another party or to transfer control of a licensee. The information collected in the application is used by Commission staff to determine whether the proposed sale of a radio station and the qualification of the new carrier are in compliance with the requirements of FCC rules and regulations.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project, Washington, D.C. 20554 and to the Office of Management and Budget Paperwork Reduction Project, Washington, D.C. 20503.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Federal Communications Commission

Information and Instructions

Notification of Commencement of Service or of Additional or Modified Facilities

Introduction

FCC 489 is a general purpose notification form for use in the Public Mobile Service and the Personal Communications Service. Each notification must contain one and only

one form FCC 489, but may also use one or more of the schedules from form FCC 600 as attachments.

Applicable Rules and Regulations

Before the notification is prepared, the notifier should review the relevant part(s) of the FCC rules in Title 47 of the Code of Federal Regulations. Copies of Title 47 may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. FCC rules often require various exhibits to be filed with a notification in addition to the information requested in the notification form. Notifiers should make every effort to file complete notifications. Failure to do so can result in the return of the notification as unacceptable.

Microfiche

Notifications on FCC 489 must be filed in microfiche form. Generally, three microfiche (one original and two copies) are required. Each microfiche must be a copy of the signed paper original. Each microfiche copy must be a 148mm × 105mm negative (clear transparent characters appearing on an background providing sufficient contrast to make legible copies) at 24× or 27× reduction. At least one of the microfiche sets must be a silver halide camera master of a copy made on silver halide film such as Kodak Direct Duplicating Film. The microfiche must be placed in paper mircofiche envelopes and submitted in a 5″ x 7½″ envelope. Row "A" (the first row for page images) of the first microfiche must be left blank.

Paper Original

Generally, the paper original must be submitted at the same time as the microfiche. Refer to the pertinent part of the FCC rules for specific instructions.

Magnetic Disks, Electronic Filing

Notifications on FCC 489 may be filed in magnetic disk form or through electronic data transmission. Each notification must be in a separate ASCII computer file, even if on the same disk. Each item must consist of the item number followed by >>> followed by the data, followed by the character sequence <<< (followed by CRLF) to mark the end of the item (e.g. N7>>>DC<<<). For items from attached form FCC 600 Schedules B or C, add the letter "N" before the item number and use bracketed, comma delimited integers to indicate as needed the schedule number, FCC location number, FCC antenna number and FCC transmitter number. For example, if the second Schedule C attached to a notification reports the addition of a location number 15, the sequence NC1{2,15} >>>A<<< must appear in the file. For another example, if the fourth Schedule B attached to a notification reports the addition of a transmitter number 3 operating on 152.24 MHz using antenna 2 at location 12, the sequences NB43 {4,12,2,3}>>>A<<< and NB44 {4,12,2,3}>>>152.24<<< must appear in the file. In general, for attached exhibits use the item number to which they refer with an "A" suffix. All data and text must be in ASCII format.

Exhibits

Each document attached as an exhibit must be current as of the date of filing. Each page of each exhibit must be identified with the number or letter of the exhibit, the number of the page of the exhibit, and the total number of pages of the exhibit. If material is to be incorporated by reference, see the instruction on incorporation by reference. Notifiers using electronic or magnetic disk filing must tag each exhibit using the relevant item number followed by "A". For example, if a text exhibit concerning item N24 is submitted the sequence N24A>>> [text of the exhibit]<<< must appear in the file.

Processing Fee

A processing fee is required with this form. To determine the required fee amount, refer to Subpart G of Part 1 of the FCC's rules (47 CFR Part 1, Subpart G) or the current fee filing guide for the radio service involved. For assistance with fees applicable to this form, call (202) 418–0220.

Incorporation by Reference

You may incorporate by reference documents, exhibits, or other lengthy showings already on file with the FCC if the information previously filed is more than one 8½″ by 11″ page in length, and all information therein is current and accurate in all significant respects. The reference must be attached as an exhibit. The reference must contain details sufficient to locate the previously filed information found (*e.g.*, station call sign, application file number if any, title of proceeding, docket number and legal citations, exhibit and page references). Items that request numbers, alphabet letters (*e.g.* "Y" or "N") or other short answers must be answered directly without reference to a previous filing.

Paperwork Reduction and Privacy Act Notice

The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The FCC will use the information provided in this form to update its official and unofficial records, and to determine whether licensees have complied with requirements imposed upon them by FCC rules. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the notification may be delayed or the notification may be returned pursuant to FCC rules. Failure to file a notification as required by FCC rules may result in apparent liability for forfeiture.

Public reporting burden for this collection is estimated to be ?? to ?? hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060–0318), Washington, D.C. 20503.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93–597, December 31, 1974, 5 U.S.C. 552a(e)(3), and the Paperwork Reduction Act of 1980, P.L. 96–511, Section 3504(c)(3).

Specific Instructions for the Notification

Licensee

Items N1–N8 These items identify the licensee filing the notification (the notifier). The information provided must match the licensee's name, address and telephone numbers as they appear in FCC records, unless one of the purposes of the notification is to change or correct this information. These items must be completed.

Items N9–N16 These items identify the contact representative (usually the headquarters office of a large licensee, the law firm or other representative of the licensee or the person or company that prepared or submitted the notification on behalf of the licensee). In

the event there is a question concerning the notification, the FCC will attempt to communicate with the contact representative first. These items are optional.

Reference Information

Item N17 This item requests the FCC call sign assigned to the station to which the notification relates. This item must be completed.

Item N18 This item requests the file number of the application, the grant of which resulted in the specific authorization to which the notification relates. This item must be completed only for notifications reporting that construction requirements have been met, and notifications reporting that service to subscribers has commenced. For other types of notifications it may be left blank (or omitted, in the case of electronic or magnetic disk filings).

Item N19 This item requests the date of required completion of construction (or the date of required commencement of service) for the authorization to which the notification relates. This date is printed on most authorizations. The FCC may use this date for further identification of the referenced authorization and to determine whether the notification has been timely filed. If the date supplied in this item differs from the date in FCC records, an exhibit explaining the discrepancy should be attached. If the notifier realizes that the notification is being late filed, an exhibit explaining the reason for the late filing should be attached. This item must be completed only for notifications reporting that construction requirements have been met, and notifications reporting that service to subscribers has commenced. For other types of notifications it may be left blank (or omitted, in the case of electronic or magnetic disk filings).

Market/Channel Block

Item N20 This item identifies by number the market or licensing area of the station to which the notification is relevant. The market designators are listed in FCC Public Notices or in the FCC Record. The response to this item must be consistent with the response to item N23. This item must be answered only if the notification is for a station or system in one of the radio services that is licensed on a geographic licensing area or "market" basis (e.g. Cellular Radio Service). It should not be answered for notifications in radio services licensed on a station by station basis, instead it may be left blank (or omitted, in the case of electronic or magnetic disk filings).

Item N21 This item indicates the channel block assigned to the station to which the notification is relevant. It must be answered only if the notification is for a station or system in one of the radio services for which spectrum is assigned in channel blocks. For filings in the Cellular Radio Service, the answer to this item is either "A" or "B". For filings in the Air-ground Radiotelephone Service (commercial aviation), the answer to this item is "C-" followed by a number between 1 and 29 (e.g. C–17). This item should not be answered for filings in radio services in which channels are individually assigned.

Item N22 This item identifies the sub-market of the system to which the notification is relevant. This item must be answered only if the notification is for a system in one of the radio services that is licensed on a geographic licensing area or "market" basis, and the market has been subdivided. For notifications in other services it may be left blank (or omitted, in the case of electronic or magnetic disk filings).

Item N23 This item identifies by name the market or licensing area of the station to which the notification is relevant. The market names are listed in FCC Public Notices or in the FCC Record. The response must be consistent with the response to item N20. This item must be answered only if the notification is for a system in one of the radio services that is licensed on a geographic licensing area or "market" basis. This item should not be answered for notifications in radio services licensed on a station by station basis. For notifications in other services it may be left blank (or omitted, in the case of electronic or magnetic disk filings).

Purpose of Notification

Item N24 This item states the purpose(s) for the notification. Enter one or more letters corresponding to the listed purposes. If letters H or I are indicated, Schedule B or C from form FCC 600 must be attached, as appropriate.

Control Points

Items N25–N27 These items provide for changes to the station or system control points, and the telephone number(s) where a person responsible for operation of the station or system could be reached, if necessary. These items must be answered only when a control point is to be added, deleted or modified. To move an existing control point or change a telephone number, delete the old information and add the new.

System Identification Numbers

Items N28–N33 These items provide for the use or discontinuance (by licensees in the Cellular Radiotelephone Service) of the system identification numbers (SIDs) assigned to other cellular systems. For other types of notifications these items must be left blank (or omitted, in the case of electronic or magnetic disk filings). Cellular licensees that need a new (not previously assigned) SID must apply for it using form FCC 600, rather than filing this notification form. By placing an "A" on a row in item N28 and providing data on that row in items N29–N33 that agree with FCC records, the notifier indicates that it has sought and obtained the consent of the licensee of the cellular system identified on that row in items N30–N33 (the consenting cellular system) to the use, by the notifier in the cellular system indicated in items N20–N23, of a system identification number (given in item 29) originally assigned to the consenting cellular system.

Certification

Items N34–N38 To be acceptable for filing, notifications must be signed in accordance with Part 1 of the FCC rules.

Attachment of Schedules A, B or C From FCC 600

Schedule A

Schedule A is attached only if it is necessary or desirable to use the FACILITIES NOT CONSTRUCTED module in connection with purpose E (reporting that a system has been partially constructed). In some cases where more than one antenna or transmitter is authorized at a location, and some but not all of the facilities have been constructed, it may be necessary to further distinguish the unconstructed facilities by channel. If so, indicate the affected channels in an exhibit, using item number NA12A.

Schedule B

Schedule B is used when site-specific data is required for notifications in radio services involving individual channel assignments. At least one Schedule B must be filed for each location for which data is required. Schedule B provides location data, information concerning proximity to market boundaries, technical information concerning the antennas and transmitters at the particular location, radial power and antenna height data, and information about points of communication for transmitters at the particular location. Each Schedule B can hold data for multiple antennas at one location by using additional copies of page 2. For

each antenna, Schedule B can hold data for up to four transmitters and/or channels. Additional Schedule Bs may be filed for the same location or antenna if necessary.

Schedule C

Schedule C is used when site-specific data is required for notifications in the radio services for which spectrum is assigned in channel blocks. One Schedule C must be filed for each location for which data is required. Schedule C provides location data, technical parameters of the facility at the particular location, radial power and antenna height data.

Specific Instructions for Schedule B Technical Data—Individual Channel Assignment

Location

Item B1 This item indicates what action the notifier wants the FCC to take in the database with regard to the location specified in items B3–B10. If the notification is for a new location in an existing system or station (i.e. the location does not already exist on any channel in the authorized system or station), the answer to this item is "A". If the location is an existing location in the authorized system or station and *the licensee has abandoned or intends to abandon the location completely*, the answer to this item is "D". (Also see the instruction for items B11–B14 below). In all other cases, the answer to this item is "M". If the notifier answers this item "A" and the FCC computer finds an exact match for the location within the system or station, the Schedule B will be processed as if this item had been answered "M". If the notifier answers this item "M" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule B will be processed as if this item had been answered "A". If the notifier answers this item "D" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule B will not be processed.

Item B2 This item is the FCC assigned location number for an existing location, or for a new location, a letter (e.g. A, B, C etc.).

Items B3–B10 These item identify the location by its address or, if there is no address, by a brief description of the location such as a distance and direction from known landmarks (e.g. "5 km south of Anytown, US").

Items B7, B8, B9 and B10 These items are the geographic coordinates of the location. Items B7 and B8 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1927. Items B7 and B8 are required. Items B9 and B10 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1983. Items B9 and B10 are optional, but may assist processing of the Schedule B.

Items B11–B14 These items key to location data that is to be replaced by the data in items B3–B10 in the data base. The notifier should complete these items only if (1) correcting geographical coordinates or (2) relocating *all* facilities at the location indicated by these items to the location specified in items B3–B10. The notifier must *not* complete these items if the intent is to relocate some, *but not all*, of the facilities at a particular location. (In such a case, the notifier must submit two Schedule Bs with the notification—one to delete the facilities at the previous location and another to add those facilities at the new location.)

Supplementary Location Information

Item B15 This item is optional and concerns proximity of the location to Canada. If the notifier does not know whether the location is North of Line A or East of Line C, this item should be left blank.

Item B16 This item is optional and concerns proximity of the location to Mexico. If the notifier does not know whether the location is within 200 kilometers (124 miles) of the U.S.-Mexico border, this item should be left blank.

Items B17–B19 These items must be completed only for filings in the narrowband Personal Communications Service (other than nationwide and response channel related filings).

Antenna

Item B20 This item indicates what action the notifier wants the FCC to take in the database with regard to the antenna specified in items B22–B28. If the filing is for a new antenna (i.e. the antenna does not already exist at this location for any channel in the authorized system or station), the answer to this item is "A". If the antenna is an existing antenna in an authorized system or station and *the licensee has abandoned or intends to abandon the antenna completely*, the answer to this item is "D". In all other cases, the answer to this item is "M". If the notifier answers this item "A" and the FCC computer finds an exact match for the antenna with the system or station, this portion of the Schedule B will be processed as if this item had been answered "M". If the notifier answers this item "M" and the FCC computer cannot find an exact match for the specified antenna within the system or station, this portion of the Schedule B will be processed as if this item had been answered "A". If the notifier answers this item "D" and the FCC computer cannot find an exact match for the specified antenna within the system or station, this portion of the Schedule B will not be processed.

Item B21 This item indicates whether the antenna in question is already authorized or whether it is only proposed in a pending application. The notifier must answer this item.

Item B22 This item indicates the FCC antenna number of the antenna. If the notifier knows this number (which is printed on the authorization), he or she should complete this item.

Items B23–28 This item describes the antenna by its type, manufacturer and model number, and must be completed for all notifications where a Schedule B is attached, except for those in the Air-ground Radiotelephone Service. Type means a generic description (e.g. collinear vertical, Yagi, panel array). Manufacturer is the name of the company that made the antenna, and model number is the designation that the manufacturer assigns to the antenna. If a polar plot of the antenna horizontal or vertical radiation pattern is required by the pertinent FCC rules, attach as an exhibit such plot (or in the case of electronic or magnetic filing, substitute a table of the polar data for 360° in 5° increments in the format: bearing, gain_{dBd}), using item number B25A.

Items B26 & B28 These items report the actual and effective height at which the antenna is mounted. These items must be completed for all notifications where a Schedule B is attached, except for those in the Air-ground Radiotelephone Service.

Item B27 This item is not used with notifications and should be left blank or omitted.

Transmitters for Antenna

Item B29 This item is the FCC transmitter number for the transmitter

Item B30 This item indicates what action the notifier wants the FCC to take in the database with regard to as many as four transmitters (or channels) associated with the (same) antenna. If the notification is for a new transmitter or channel (i.e. a transmitter or channel that does not already exist for this antenna at this location in the system or station), the answer to this item is "A". If the transmitter or channel already exists for this antenna at this location in the authorized system or station and the

licensee has abandoned or intends to abandon the transmitter or channel completely, the answer to this item is "D". In all other cases, the answer to this item is "M". If the notifier answers this item "A" and the FCC computer finds an exact match for the transmitter or channel for this antenna at this location within the system or station, this portion of the Schedule B will be processed as if this item had been answered "M". If the notifier answers this item "M" and the FCC computer cannot find an exact match for the specified transmitter or channel for this antenna at this location within the system or station, this portion of the Schedule B will be processed as if this item had been answered "A". If the notifier answers this item "D" and the FCC computer cannot find an exact match for the specified transmitter or channel for this antenna at this location within the system or station this portion of the Schedule B will not be processed.

Item B31 This item specifies the center frequencies of the channels on which the transmitters operate. The pertinent channel(s) must be specified for each transmitter.

Item B32 This item requests a four letter code that identifies the transmitter class. The four letter code consists of two letters that conform to the international station classification nomenclature used by the International Frequency Registration Board, followed by two letters that further classify the transmitter by usage. The codes are as follows:

Base	FBBS
Standby	FBST
Mobile subscriber	MLSB
Dispatch	FXDI
Auxiliary test	FXTS
Control	FXCT
Repeater	FXRP
Fixed relay	FXRX
Ground	FBGS
Air-ground signaling	FBSI
Inter-office	FXIO
Fixed subscriber	FXSB
Central office	FXCO

Item B33 This item should be completed only if the notification reports the use of an emission type that is not authorized in the FCC rules for use by all stations in the pertinent radio service, but has already been authorized for use by the station or system to which the notification pertains.

Item B34 This item reports the maximum effective radiated power (ERP) in any direction on the specified channel. This item must be completed for all transmitter notifications. The answer must be stated in Watts.

Radial Data for Antenna

Item B35 This item reports the height of the antenna center of radiation above the average terrain elevation (AAT) along each of the eight cardinal radials. This item must be completed for all antenna notifications, except for those in the Air-ground Radiotelephone Service.

Items B36–B39 These items report the effective radiated power (ERP) for each transmitter or channel in each of the eight cardinal radial directions. These items must be completed for all transmitter notifications, except for those in the Air-ground Radiotelephone Service.

Points of Communication for Antenna

Item B40–B45 These items describe fixed points of communication for (1) stations in the Rural Radiotelephone Service serving individually licensed subscribers, and (2) point-to-multipoint transmitters operating on channels that are assigned only to stations that communicate with four or more points. These items should be completed only by notifiers reporting a relocation of these points of communications and not for any other purpose.

Specific Instructions for FCC 600 Schedule C Technical Data—Block Channel Assignment

Location

Item C1 This item indicates what action the notifier wants the FCC to take in the database with regard to the location specified in items C3–10. If the notification is for a new location in an existing system or station (i.e. the location does not already exist in the authorized system or station), the answer to this item is "A". If the location is an existing location in the authorized system or station and *the licensee has abandoned or intends to abandon the location completely*, the answer to this item is "D". (Also see the instruction for items C11–C14 below.) In all other cases, the answer to this item is "M". If the notifier answers this item "A" and the FCC computer finds an exact match for the location within the system or station, the Schedule C will be processed as if this item had been answered "M". If the notifier answers this item "M" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule C will be processed as if this item had been answered "A". If the notifier answers this item "D" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule C will not be processed.

Item C2 This item is the FCC assigned location number for an existing location, or for a new location, a letter (e.g. A, B, C etc).

Items C3–C6 These items identify the location by its address or, if there is no address, by a brief description of the location such as a distance and direction from known landmarks (e.g. "5 km south of Anytown, US").

Items C7, C8, C9 and C10 These items are the geographic coordinates of the location. Items C7 and C8 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1927. Items C7 and C8 are required. Items C9 and C10 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1983. Items C9 and C10 are optional, but may assist processing of the Schedule C.

Items C11–C14 These items key to location data that is to be replaced by the data in items C3–C10 in the data base. The notifier should complete these items only if (1) correcting geographical coordinates or (2) relocating *all* facilities at the location indicated by these items to the location specified in items C3–C10. The notifier must *not* complete these items if the intent is to relocate some, *but not all*, of the facilities at a particular location. (In such a case, the notifier must submit two Schedule Cs with the filing—one to delete the facilities at the previous location and another to add those facilities at the new location.)

Technical Parameters

Items C15, C16 These items report the actual and effective height at which the antenna is mounted. These items must be completed for all notifications to which Schedule C is attached, except for those in the Air-ground Radiotelephone Service.

Item C17 This item reports the maximum effective radiated power (ERP) of the facility in any direction. This item must be completed for all transmitter notifications to which Schedule C is attached. The answer must be stated in Watts.

Radial Data

Item C18 This item reports the height of the antenna center of radiation above the average terrain elevation (AAT) along each of the eight cardinal radials. This item must be completed for all notifications to which Schedule C is attached, except for those in the Air-ground Radiotelephone Service.

Item C19 This item reports the effective radiated power (ERP) in each

of the eight cardinal radial directions. This item must be completed for all notifications to which Schedule C is attached, except for those in the Air-ground Radiotelephone Service.

Item C20 This item reports the calculated radial distance to the service area boundary (SAB) from the specified location. This item is required only for notifications in the Cellular Radiotelephone Service.

Item C21 This item reports the determined radial distance to the Cellular Geographic Service Area (CGSA) from the specified location. This item is required only for notifications in the Cellular Radiotelephone Service.

BILLING CODE 6712-01-M

FCC 489

FEDERAL COMMUNICATIONS COMMISSION

Approved by OMB
####
Expires dd/mm/yy
Est. Avg. Burden Hours
Per Response: ## Hrs.

Notification of Commencement of Service or of Additional or Modified Facilities

Personal Communications Service
Cellular Radiotelephone Service
Paging and Radiotelephone Service
Rural Radiotelephone Service
Offshore Radiotelephone Service
Air-ground Radiotelephone Service

FEE Use Only

File Number
(FCC Use Only)

FILING FEE

(a) Fee Type Code	(b) Fee Multiple	(c) Fee Due for Fee Type Code in (a)	(d) Total Amount Due	FEE Use Only
			$	

LICENSEE

N1. Legal Name of Licensee	N2. Voice Telephone Number ( )	
N3. Assumed Name Used for Doing Business (if any)	N4. Fax Telephone Number ( )	
N5. Mailing Street Address or P.O. Box		
N6. City	N7. State	N8. Zip Code

N9. Name of Contact Representative (if other than licensee)	N10. Voice Telephone Number ( )	
N11. Firm or Company Name	N12. Fax Telephone Number ( )	
N13. Mailing Street Address or P.O. Box		
N14. City	N15. State	N16. Zip Code

REFERENCE INFORMATION

N17. Call Sign	N18. File Number	N19. Date of Required Completion (or commencement)

MARKET / CHANNEL BLOCK

N20. Market Designator	N21. Channel Block	N22. Sub-Market Designator	N23. Market Name

PURPOSE OF NOTIFICATION

N24. The purpose of this submission is to notify the Commission that:

[ ]

Enter one or more letters from the list to the right that indicate the purpose of this notification.

SATISFACTION OF CONSTRUCTION REQUIREMENTS

A stage I construction requirements for the referenced system have been met (CN, CW, CG)
B stage II construction requirements for the referenced system have been met (CN, CW, CG)
C stage III construction requirements for the referenced system have been met (CN, CW)
D all of the facilities authorized pursuant to the referenced filing have been constructed, in exact accordance with the authorization unless otherwise indicated (CL, CD, CR, CO, CG)
E some, but not all, of the facilities authorized pursuant to the referenced filing have been constructed, in exact accordance with the authorization unless otherwise indicated (CL, CD, CR, CO, CG)

COMMENCEMENT OF SERVICE

F nationwide service to subscribers has commenced (CN, CG)
G service to subscribers has commenced (CN, CW, CL, CD, CR, CO, CG)

ADDITIONAL OR MODIFIED FACILITIES

H minor modifications have been made to authorized facilities (CL, CD, CR, CO, CG)
I one or more transmitters have been added to an authorized system (CL, CD, CR, CO, CG)

OTHER

J one or more system identification numbers have been put into use or discontinued (CL)
K one or more authorized facilities have been taken out of service (CL, CD, CR, CO, CG)
L one or more control points have been established or discontinued (all)
M a partial assignment of authorization was not completed within 60 days (all)
N the licensee's name, address, etc. is changed, but no assignment or transfer of control occurred (all)
O there are errors in FCC records that should be corrected as indicated herein (all)

CONTROL POINTS

N25. Action Requested Add Delete	N26. Location Street Address, City or Town, State	N27. Telephone Number

SYSTEM IDENTIFICATION NUMBERS

N28. Action Requested Add Delete	N29. SID	N30. Market Designator	N31. Channel Block	N32. Sub-Market Designator	N33. Market Name

NOTE: By placing an "A" on a row in item N28 and providing data on that row in items N29-N33 that agree with FCC records, the notifier indicates that it has sought and obtained the consent of the licensee of the cellular system identified on that row in items N30-N33 (the consenting cellular system) to the use, by the notifier in the cellular system indicated in items N20-N23, of a system identification number (given in item 29) originally assigned to the consenting cellular system.

CERTIFICATION

The LICENSEE waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise. All information on this notification is a material part of the notification. All statements made in any attached exhibits are a material part hereof and are incorporated herein as if set out in full in this notification. The undersigned, individually and for the licensee, hereby certifies that the statements made herein are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

N34. Licensee is a (an) [ ] Individual Unincorporated Association Partnership Corporation

N35. Typed Name of Person Signing	N36. Title

N37. Signature	N38. Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S.Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

Federal Communications Commission

Information and Instructions

Application for Assignment of Authorization or Consent to Transfer of Control of Licensee

Introduction

FCC 490 is a form used for applications for assignment of authorization and consent to transfer of control in the commercial mobile radio services and the Rural Radiotelephone Service. Each such application must be made on form FCC 490. For full assignments of authorization, FCC 490 alone is sufficient. For partial assignments, additional forms (FCC 600 and FCC 489) are required.

Applicable Rules and Regulations

Before the application is prepared, the applicant should review the relevant part(s) of the FCC rules in Title 47 of the Code of Federal Regulations. Copies of Title 47 may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. FCC rules often require various exhibits to be filed with an application in addition to the information requested in the application form. Applicants should make every effort to file complete applications. Failure to do so can result in the return as unacceptable for filing or dismissal of the application.

Microfiche

For the services governed by Part 22 and Part 24 of FCC rules, applications on FCC 490 must be filed in microfiche form. Generally, three microfiche (one original and two copies) are required. Each microfiche must be a copy of the signed paper original. Each microfiche copy must be a 148mm × 105mm negative (clear transparent characters appearing on an background providing sufficient contrast to make legible copies) at 24× or 27× reduction. At least one of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicating Film. The microfiche must be placed in paper microfiche envelopes and submitted in a 5" x 7½" envelope. Row "A" (the first row for page images) of the first microfiche must be left blank. The paper original must be submitted at the same time as the microfiche.

Magnetic Disks, Electronic Filing

For the services governed by Part 22 and Part 24 of FCC rules, applications on FCC 490 may be filed in magnetic disk form or through electronic data transmission. Each application must be in a separate ASCII computer file, even if on the same disk. Each item must consist of the item number followed by >>> followed by the data, followed by the character sequence <<< (followed by CRLF) to mark the end of the item (e.g. T6>>>DC<<<). In general, for attached exhibits use the item number to which they refer with an "A" suffix. All data and text must be in ASCII format.

Exhibits

Each document attached as an exhibit must be current as of the date of filing. Each page of each exhibit must be identified with the number or letter of the exhibit, the number of the page of the exhibit and the total number of pages of the exhibit. If material is to be incorporated by reference, see the instruction on incorporation by reference. Notifiers using electronic or magnetic disk filing must tag each exhibit using the relevant item number followed by "A". For example, if a text exhibit concerning item T48 is submitted, the sequence T48>>>[text of the exhibit]<<< must appear in the file.

Processing Fee

A processing fee is required with this form. To determine the required fee amount, refer to Subpart G of Part 1 of the FCC's rules (47 CFR Part 1, Subpart G) or the current fee filing guide for the radio service involved. For assistance with fees applicable in the radio services governed by Part 22 and Part 24 of the FCC rules, call (202) 418–0220. For assistance with fees in other radio services, contact the Consumer Assistance Branch, Federal Communications Commission, Gettysburg, PA 17326, (800) 322–1117.

Incorporation by Reference

Applicants in the radio services governed by Part 22 and Part 24 of FCC rules may incorporate by reference documents, exhibits, or other lengthy showings already on file with the FCC if the information previously filed is more than one 8½" by 11" page in length, and all information therein is current and accurate in all significant respects. The reference must be attached as an exhibit. The reference must contain details sufficient to locate the previously filed information can be found (e.g. station call sign, application call sign, application file number if any, title of proceeding, docket number and legal citations, exhibit and page references). Items that request numbers, alphabet letters (e.g. "Y" or "N" or other short answers must be answered directly without reference to a previous filing.

Paperwork Reduction and Privacy Act Notice

The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The FCC will use the information provided in this form to determine whether a grant of the application would serve the public interest. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned pursuant to FCC rules. Failure to obtain prior FCC approval of an assignment of authorization or transfer of control as required by FCC rules may result in revocation or apparent liability for forfeiture.

Public reporting burden for this collection is estimated to be ?? to ?? hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget. Paperwork Reduction Project (3060–0319), Washington, D.C. 20503.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93–597, December 31, 1974, 5 U.S.C. 552a(e)(3), and the Paperwork Reduction Act of 1980, P.L. 96–511, Section 3504(c)(3).

Specific Instructions for the Application

Assignor or Transferor

Items T1–T8 These items identify the licensee that is applying to assign its authorization or for consent to a transfer for control. The information provided must match the licensee's name, address and telephone numbers as they appear in FCC records, unless it is intended to change or correct this information. These items must be completed.

Items T9–T16 These items identify the contact representative (usually the headquarters office of a large licensee, the law firm or other representative of the licensee of the person or company that prepared or submitted the

application on behalf of the licensee). In the event there is a question concerning the application the FCC will attempt to communicate with the contact representative first. These items are optional.

Type of Transaction

Item T17 This item indicates whether the application is for assignment of authorization or consent to transfer of control. This item must be completed.

Item T18 This item indicates how the assignment or transfer of control is to be accomplished. This item must be completed.

Item T19 This item indicates whether the assignment of authorization or transfer of control is voluntary or involuntary. This item must be completed.

Item T20 This item indicates whether or not the application is for a *pro forma* assignment of authorization or transfer of control. This item must be completed.

Item T21 This item indicates whether or not local or state authorization is required for the assignment of authorization or transfer of control. This item must be completed.

Assignment of Stock

Items T22–T27 These items report the number of shares of stock and the classification of these shares (e.g. common stock) involved in a transfer of control effected by the transfer of stock. These items must be completed only for applications involving a transfer of stock.

Authorization(s) to be Assigned or Transferred

This table identifies the authorization(s) to be assigned, or for which control of the licensee is to be transferred. At least one row of this table must be completed. Use a separate row for each authorization. Attach additional copies of page 2 if necessary to list more authorizations.

Item T28 This column of the table lists the call sign(s) of the authorizations to be assigned or transferred.

Item T29 This column of the table identifies the radio service or radio service sub-category for each authorization. Use the following two-letter codes designating the FCC radio service, or radio service subcategory.

Commercial Personal Communications Service	
Broadband	CW
Narrowland	CN
Cellular Radiotelephone Service	CL
Paging and Radiotelephone Service	CD
Air-ground Radiotelephone Service	CG
Offshore Radiotelephone Service	CO
Rural Radiotelephone Service	CR
Business Radio Service (if commercial)	
806–821/851–866 MHz, conventional.	GB
806–821/851–866 MHz, trunked	YB
896–901/935–940 MHz, conventional.	GU
896–901/935–940 MHz, trunked	YU
929–930 MHz, paging systems	GS
Other	IB
Specialized Mobile Radio	
806–821/851–866 MHz, conventional.	GX
806–821/851–866 MHz, trunked	YX
896–901/935–940 MHz, conventional.	GR
896–901/935–940 MHz, trunked	YS
220 MHz Systems	
Nationwide Non-Commercial 10 Channel.	NL
Nationwide Non-Commercial 5 Channel.	NS
Nationwide Commercial 5 Channel	NC
Non-Nationwide 5 Channel Trunked.	QT
Non-Nationwide Data	QD
Non-Nationwide Public Safety/Mutual Aid.	QM
Non-Nationwide Other	QO

Item T30 This column of the table lists the data on which each authorization was first granted to the assignor or transferor.

Item T31 This column of the table indicates how the assignor of transferor obtained the authorization(s). Use the following codes:

Uncontested Application (no competing applications).	UA
Contested Application (competing applications)	
Comparative Hearing	CH
Random Selection	RS
Competitive Bidding	CB
Voluntary Assignment of Authorization.	VA
Involuntary Assignment of Authorization.	IA
Voluntary Transfer of Control	VT
Involuntary Transfer of Control	IT

Item T32 This column of the table must contain the name of the licensee exactly as it currently appears in the official FCC records. It may differ from that in items T1 and T3 if the name has been changed but FCC records do not yet reflect the change.

Assignee or Transferee

Items T33–T40 These items identify the party that is applying to become or control the licensee of the authorizations listed in items T28–T32. These items must be completed.

New Licensee Information

Items T41–T48 These items identify who the licensee will be if an assignment of authorization is granted. The information provided will become the licensee's name, address and telephone numbers of record, and the authorization will be sent to this address. This item must be completed only if the licensee name and other information will be different from that given in items T1–T8 after the authorization is assigned.

Basic Qualifications

Items T49–T53 These items request indications and information that enable the FCC to determine whether the assignee or transferee or assignor or transferror is disqualified from holding, assigning or transferring an FCC authorization because of misconduct. Items T49–T51 must be answered "N" if there is no misconduct. Item T52 must be answered "N" if the assignor or transferor and the assignee or transferee applicant is not a party in any pending matter relevant to misconduct. Item T53 must be answered "Y" if the applicant is not subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988 (21 U.S.C. § 862). If the answer to items T49, T50, T51 or T52 is "Y" or if the answer to item T53 is "N", attach as an exhibit a statement explaining the circumstances and why the applicant believes that an FCC grant of the application would be in the public interest notwithstanding the actual or alleged misconduct. Use T49A, T50A, T51A, T52A, or T53A as the item number(s) for such exhibits, respectively.

Assignor or Transferor Certification

Items T54–T57 In order for the application to be acceptable for filing, the assignor or transferor must sign this certification in accordance with Part 1 of the FCC rules.

Assignee or Transferee Certification

Items T58–T62 In order for the application to be acceptable for filing, the assignee or transferee must sign this certification in accordance with Part 1 of the FCC rules.

BILLING CODE 6712-01-M

FCC 490

FEDERAL COMMUNICATIONS COMMISSION

Approved by OMB
xxx xxxx
Expires dd/mm/yy
Est. Avg. Burden Hours
Per Response: 85 Hrs.

Application for Assignment of Authorization or Consent to Transfer of Control of Licensee

Commercial Mobile Radio Services
Rural Radiotelephone Service

FEE Use Only

File Number
(FCC Use Only)

FILING FEE

(a) Fee Type Code	(b) Fee Multiple	(c) Fee Due for Fee Type Code in (a)	(d) Total Amount Due	FEE Use Only
			$	

ASSIGNOR OR TRANSFEROR

T1. Name of Assignor or Transferor	T2. Voice Telephone Number ( )	
T3. Assumed Name Used for Doing Business (if any)	T4. Fax Telephone Number ( )	
T5. Mailing Street Address or P.O. Box		
T6. City	T7. State	T8. Zip Code

T9. Name of Contact Representative (if other than Assignor or Transferor)	T10. Voice Telephone Number ( )	
T11. Firm or Company Name	T12. Fax Telephone Number ( )	
T13. Mailing Street Address or P.O. Box		
T14. City	T15. State	T16. Zip Code

TYPE OF TRANSACTION

T17. This application requests [ ] Assignment of authorization Consent to Transfer of Control of Licensee

T18. How will assignment or transfer of control be accomplished? [ ] Sale or other transfer or assignment of stock Other

T19. This assignment of authorization or transfer of control of licensee is [ ] Voluntary Involuntary

T20. Will this be a *pro forma* assignment or transfer of control? [ ] Yes No

T21. Is local or state authorization required for this assignment or transfer of control? [ ] Yes No

ASSIGNMENT OF STOCK

Stock	Number of Shares	Classification
Shares to be transferred	T22.	T23.
Shares issued and outstanding	T24.	T25.
Shares authorized	T26.	T27.

AUTHORIZATION(S) TO BE ASSIGNED OR TRANSFERRED

T28. Call Sign	T29. Radio Service	T30. Date of Grant	T31. How Obtained	T32. Name of Licensee (as appearing in FCC Records)

ASSIGNEE OR TRANSFEREE

T33. Name of Assignee or Transferee	T34. Voice Telephone Number ( )	
T35. Assumed Name Used for Doing Business (if any)	T36. Fax Telephone Number ( )	
T37. Mailing Street Address or P.O. Box		
T38. City	T39. State	T40. Zip Code

NEW LICENSEE INFORMATION

T41. Legal Name of Licensee	T42. Voice Telephone Number ( )	
T43. Assumed Name Used for Doing Business (if any)	T44. Fax Telephone Number ( )	
T45. Mailing Street Address or P.O. Box		
T46. City	T47. State	T48. Zip Code

BASIC QUALIFICATIONS

T49.	Has the assignor or transferor, assignee or transferee, or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission?	[ ]	Yes No
T50.	Has the assignor or transferor, assignee or transferee, or any party to this application, or any party directly or indirectly controlling the assignor or transferor, assignee or transferee, or any party to this application ever been convicted of a felony by any state or federal court?	[ ]	Yes No
T51.	Has any court finally adjudged the assignor or transferor, assignee or transferee, or any party to this application, or any person directly or indirectly controlling the assignor or transferor, assignee or transferee, or any party to this application, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition?	[ ]	Yes No
T52.	Is the assignor or transferor, assignee or transferee, or any party to this application, or any person directly or indirectly controlling the assignor or transferor, assignee or transferee, or any party to this application, currently a party in any pending matter referred to in the preceding two items?	[ ]	Yes No
T53.	Do the assignor or transferor and the assignee or transferee each certify that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, or, in the case of a corporation, partnership or unincorporated association, no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section?	[ ]	Yes No

ASSIGNOR OR TRANSFEROR CERTIFICATION

The ASSIGNOR or TRANSFEROR represents that the authorization will not be assigned or that control of the licensee will not be transferred unless and until the consent of the Federal Communications Commission has been given; that all exhibits attached or referenced herein are a material part hereof and are incorporated herein as if set out in full in this application; and that all statements made in this application are true, complete and correct to the best of his or her knowledge and belief.

T54. Typed Name of Person Signing	T55. Title
T56. Signature	T57. Date

ASSIGNEE OR TRANSFEREE CERTIFICATION

The ASSIGNEE or TRANSFEREE waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise. The assignee or transferee certifies that grant of this assignment or transfer of control would not cause the assignee or transferee to be in violation of the spectrum aggregation limit in 47 CFR Part 20. The undersigned, individually and for the assignee or transferee, hereby certifies that the statements made herein are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

T58. The assignee or transferee is a (an) [ ] Individual Unincorporated Association Partnership Corporation

T59. Typed Name of Person Signing	T60. Title
T61 Signature	T62. Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S.Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

Federal Communications Commission

Information and Instructions

Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization

Introduction

Form FCC 600 is a multi-part form comprising a main form and several optional schedules. Each application or amendment must contain one and only one main form (pages 1 and 2), but may contain as few or as many of the optional schedules as necessary. Some of the schedules are also used as attachments to Form FCC 489.

For Assistance

For assistance with Form FCC 600 applications for radio services regulated under Part 22 or Part 24, contact the mobile licensing division at the FCC, Washington D.C. 20554, (202) 481–1350. For assistance with Form FCC 600 applications for other services, contact Consumer Assistance Branch, Federal Communications Commission, Gettysburg, PA 17325–7245, (800) 322–1117 or (717) 337–1212.

English to Metric Conversions

The following English to Metric equivalents should be used to convert heights and distances, where necessary:
1 foot = 0.3048 meters
1 mile = 1.6093 kilometers

Applicable Rules and Regulations

Before the application is prepared, applicant should review the relevant part of the FCC rules in Title 47 of the Code of Federal Regulations. Copies of Title 47 may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. FCC rules generally require various exhibits to be filed with an application in addition to the information requested in the application form. Applicants should make every effort to file complete applications. Failure to do so can result in a dismissal or return of the application or a delay in processing the application.

Paper Copies

The number of paper copies of this application required to be filed varies depending on the radio service. Refer to the pertinent part of the FCC rules for specific instructions.

Microfiche Copies (Part 22 and Part 24)

Applications on Form FCC 600 for authority to operate facilities in the radio services governed by Part 22 or Part 24 of the FCC rules must be filed in microfiche form. See the pertinent part of the FCC rules to determine how this requirement applies. If microfiche is required, submit three microfiche (one original and two copies). Each microfiche must be a copy of the signed original. Each microfiche copy must be a 148mm × 105mm negative (clear transparent characters appearing on an opaque background) at 24X to 27X reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicating Film. The microfiche must be placed in paper microfiche envelopes and submitted in a 5″ × 7.5″ envelope. Row "A" (the first row for page images) of the first microfiche must be left blank.

Magnetic Disks, Electronic Filing

Applications on Form FCC 600 for authority to operate facilities in certain radio services may be filed in magnetic disk form or through electronic data transmission. See the pertinent part of the FCC rules to determine whether this provision applies and the requisite filing details.

For applications in the services governed by Part 22 or Part 24 of the FCC rules, each filing must be in a separate computer file, even if on the same disk. Each item must consist of the item number followed by >>> followed by the data, followed by the character sequence <<< (followed by CRLF) to mark the end of the item (e.g. 7>>>DC<<<). For items from Schedules B or C, use bracketed, comma delimited integers to indicate as needed the schedule number, FCC location number, FCC antenna number and FCC transmitter number. For example, if the second Schedule C in a filing is to add a location number 15, the sequence C1{2, 15}>>>A<<< must appear in the file. For another example, if the fourth Schedule B in a filing is to add a transmitter number 3 to operate on 152.24 MHz using antenna 2 at location 12, the sequences B43{4, 12, 2, 3}>>>A<<< and B44{4, 12, 2, 3}>>>152.24<<< must appear in the file. In general, attached exhibits use the item number to which they refer with an "A" suffix. All data and text must be in ASCII format.

Processing Fee

A processing fee may be required with this form. To determine the required fee amount, refer to Subpart G of Part 1 of the FCC's rules (47 CFR Part 1, Subpart G) or the current fee filing guide for the radio service involved. For assistance with fees applicable in the radio services governed by Part 22 and Part 24 of the FCC rules, call (202) 418–0220. For assistance with fees in other radio services, contact the Consumer Assistance Branch, Federal Communications Commission, Gettysburg, PA 17325–7245, (800) 322–1117 or (717) 337–1212.

Incorporation by Reference (Part 22 and Part 24)

You may incorporate by reference documents, exhibits, or other lengthy showings already on file with the FCC only if: the information previously filed is more than one 8½″ by 11″ page in length, and all information therein is current and accurate in all significant respects; the reference states specifically where the previously filed information can be found (i.e., station call sign and application file number, title of proceeding, docket number and legal citations), including exhibit and page references. Use the relevant item number followed by "A". Items that call for numbers, or which can be answered "Y" or "N" by or other short answers must be answered directly without reference to a previous filing.

Current Information

Information filed with the FCC must be kept current. The applicant should notify the FCC regarding any material change in the facts as they appear in the application. See 47 CFR 1.65.

Waiver Requests

Requests for waivers must contain as an exhibit a statement of reasons sufficient to justify a waiver. A separate request with the required showing must be made for each rule waiver desired, identifying the specific rule or policy for which the waiver is requested. For waiver requests other than for rules in Part 22 and Part 24, there may be a fee requirement. Refer to the appropriate FCC fee filing guide.

Exhibits (Part 22 and Part 24)

Each document required to be filed as an exhibit should be current as of the date of filing. Each page of each exhibit must be identified with the number or letter of the exhibit, the number of the page of the exhibit and the total number of pages of the exhibit. If material is to be incorporated by reference, see the instruction on incorporation by reference. If interference studies are required by rule, attach these as an exhibit. If this application is a request for an extension of time to complete construction, then attach as an exhibit a statement explaining how failure to complete construction was beyond the applicant's control.

Paperwork Reduction and Privacy Act Notice

The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The FCC will use the information provided in this form to determine whether grant of this application is in the public interest. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned without action pursuant to FCC rules. Your response is required to obtain the requested authority.

Public reporting burden for this collection is estimated to be 0.25 to 7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Federal Communications Commission, Records Management Branch, Washington, D.C. 20554.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93–597, December 31, 1974, 5 U.S.C. 552a(e)(3), and the Paperwork Reduction Act of 1980, P.L. 96–511, Section 3504(c)(3).

International Registration (Other Than Part 22 and Part 24)

Notice: As a signatory party to international treaty agreements, the FCC performs certain actions regarding the use of radio. The technical details of your station parameters may be reported to the International Telecommunications Union, Geneva, Switzerland and to countries which border on or are in close proximity to the United States. This information along with data reported by other nations will be used to protect reported stations and aid in resolution of interference disputes between licensees in different countries.

Certain stations, because of their geographic location, would be best protected by provision of additional information. Specifically, this includes any proposed station which is located in the region north of Line "A" as defined in Section 1.955 of FCC rules, or in the State of Alaska east of Line "C". If the desired station is to operate in the 806–821/851–866, 821–824/866–869, 896–901/935–940 MHz bands, please consult the applicable rules for available frequencies and use near the United States/Canada/Mexico border.

Note: For control stations meeting the 20 foot criteria that require greater than 5 watts output power/ERP for operations in regions north of Line "A" or in Alaska east of Line "C", complete Schedule E items E1–E8 and Schedule G items G1–G6 and G8 as LOC letter A–F.

For your convenience and ease of determination, a list of all States and counties within those States above line "A", for which applicants may wish to submit additional information, has been included following schedule H instructions and designated Appendix 1. In addition, a new form labeled Form 600 Schedule H has been developed for supplying this information. Because the operational characteristics for the majority of Land Mobile stations are quite similar, submission of all of the data requested by the ITU or other nations imposes a somewhat heavier burden on applicants than would seem necessary. NOTE: However, the form in which certain information is provided, can significantly benefit an applicant. In particular, mobile or temporary stations whose area of operation is defined in terms of a kilometer radius of specified geographical coordinates will provide for more accurate protection of these stations than defining their area of operation by some other means (See Items E9–E11 on the Form 600 Schedule E) and will expedite the coordination process where it is necessary.

Unless advised to the contrary, the FCC will make certain assumptions which reflect the typical station in these services. Carefully review the list below with respect to your particular situation. If you believe that these assumptions would leave your station insufficiently protected, provide the correct data on Form 600 Schedule H and attach it with your application. If you do not provide the actual data and an interference problem arises involving another country's station, your station will be protected only to the limit of the FCC's assumptions.

The following station parameters will be assumed unless otherwise stated:

1. Antenna Polarization. All stations will be reported as having antennas with vertical polarization.

2. Antenna Gain. The antenna gain for all stations will be assumed to be 6 dB.

3. Antenna Azimuth of Main Lobe. We will report each base or mobile relay station as having an omnidirectional (360 degrees) azimuth. We will assume that each control station associated with a mobile relay station has a directional antenna with its azimuth of maximum radiation directed toward the mobile relay station.

4. Beamwidth. Where an omnidirectional antenna is assumed, beamwidth has no relevance, and therefore, no assumed value will be used. For control stations we will assume 20 degrees.

5. Class of Operation for HF Fixed Stations. All HF Fixed applicants must file Form 600 Schedule H. Therefore no assumption will be made.

6. Receiver Information. All stations specified on the same application form are assumed to be communicating with each other as a system. Receivers will be assumed to operate at the same location as the transmitter. In other words, we will assume that the receiver site for a mobile station transmission is the location of the associated base station. The receiver site for a base station transmission will be assumed to be the area of operation of the associated mobile stations. For a control station transmission, the location of the associated mobile relay station is the location of the receiver.

7. Control stations meeting the 20 foot criteria that are operating in the region north of Line "A" or in Alaska east of Line "C" will not be coordinated with Canada unless Schedule E items E1–E8 and Schedule G items G1–G6 and G8 are completed as LOC letter A–F. The ERP will be limited to 5 watts if the fixed location is not provided for controls meeting the 20 foot criteria operating in these areas.

Frequency Coordination

All applications for station authorizations which require frequency coordination in accordance with applicable FCC rules and any correspondence relating thereto, must initially be submitted to the certified frequency coordinator for the radio service or frequency group involved. For frequency coordination fee information, contact the appropriate frequency coordinator for your radio service. After the completion of frequency coordination, these applications shall be forwarded by the coordinator to the correct address. All other applications shall be filed by the applicant at the correct address listed on the most current Public Notice. Applications should be filed at least sixty (60) days prior to the date upon which the radio facilities are required to be in operation.

List of Certified Coordinators (Other Than Part 22 and Part 24)

See the most current Public Notice for correct addresses or contact Consumer

Assistance Branch, Federal Communications Commission, Gettysburg, PA 17325–7245 (717) 337–1212 or (800) 322–1117.

Quiet Zone

The quiet zone is a restricted area of operation within Virginia, West Virginia, and Garrett County, Maryland in the vicinity of the National Radio Astronomy Observatory, Green Bank, Pocahontas County, West Virginia. Permanent Stations in this area should be checked for compliance with applicable Commission rules. If the permanent station, including control stations meeting the 20 foot criteria, is bounded by 39° 15′ N on the north, 78° 30′ W on the east, 37° 30′ N on the south, and 80° 30′ W on the west, the application must be accompanied by a copy of the clearance obtained from the National Radio Astronomy Observatory.

The request for clearance must be sent to: National Radio Astronomy Observatory, P.O. Box 2, Green Bank, West Virginia 24944.

Specific Instructions for the Main Form

Applicant

Items 1–8 These items identify the applicant. If an authorization is granted, the information provided will become the licensee's name, address and telephone numbers of record, and the authorization will be sent to this address. Applicants must provide a current and valid mailing address in the United States, and this address must be that of the applicant, not the address of the radio equipment supplier, service shop or of any other third party. Failure to respond to FCC correspondence sent to the address of record may result in dismissal of an application, liability for forfeiture or revocation of an authorization.

Items 9–16 These items identify the contact representative (usually the headquarters office of a large applicant, the law firm or other representative of the applicant, or the person or company that prepared or submitted the application on behalf of the applicant). In the event there is a question concerning the application, the FCC will attempt to communicate with the contact representative first.

Classification of Filing

Item 17 Indicates whether the filing is intended as an application or an amendment to a previously filed application. If "N" is indicated, the FCC will assign a new file number to the filing. If "A" is indicated, the FCC will attempt to associate the filing with a pending application described by Item 21.

Item 18 Indicates whether the applicant believes that the FCC should classify the filing, for purposes of compliance with Section 309 of the Communications Act of 1934, as amended, as an application for a *minor* change to an existing station, if the filing is an application, or as a *minor* amendment, if the filing is an amendment. For private radio services to which Section 309 does not apply, this item should be marked "D". For commercial mobile services, which are subject to Section 309, this item must be marked either "Y" or "N". If this item is marked "Y", the FCC will not list the filing in a Public Notice unless during processing the FCC subsequently determines that the filing should not be classified as minor. If this item is marked "N" and the filing appears to be acceptable for filing, the FCC will list the filing in a Public Notice as acceptable for filing prior to actually classifying it during processing.

Item 19 This item indicates whether the filing proposes an initial facility, modification of an existing facility or renewal of an existing station, for the purposes of classification in regard to eligibility for inclusion in competitive bidding procedures. In the event that the filing is or becomes mutually exclusive with one or more other filings, the indication given here assists the FCC in determining what method will be used to select which filing(s) to grant. This item does not have to be completed for minor applications or amendments.

Item 20 If the filing is related to an existing station, this item must be completed. The information requested in this item (call sign) identifies the existing station to which the filing is relevant.

Item 21 If the filing is an amendment to a previously-filed application, this item must be completed. The information requested in this item identifies the previously-filed application.

Nature of Service

Item 22 This item indicates whether the applicant is applying for authorization to provide or use commercial mobile radio service, private mobile service, both commercial and private mobile service, or fixed service (such as Rural Radiotelephone Service, including BETRS, but not including fixed stations that are incidental to provision of mobile service). If the answer is "both", attach as an exhibit a description of the proposed service that explains why the applicant believes that a portion of the service to be provided should be classified as a private mobile service. Use 22A as the item number for the exhibit.

Items 23–25 These items request information that the FCC could use to determine whether a proposed service is a commercial mobile radio service or a private radio service under Section 332 of the Communications Act of 1934, as amended. Item 23 must be answered "P" if the proposed service is to be made available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, "E" if the service is to be made available to eligible users other than the applicant, but not constituting a substantial portion of the public, or "I" if the service will be available only to the applicant and its employees. Item 24 must be marked "P" if the service is to be provided for profit, *i.e.* with the intent of receiving compensation or monetary gain. Otherwise, Item 24 must be marked "N". Item 25 must be marked "Y" if the applicant proposes to provide interconnected service as defined in § 20.3 of the FCC rules. Otherwise, Item 25 must be marked "N".

Item 26 This item requests a two-letter code designating the FCC radio service, or radio service sub-category, in which the applicant requests authorization and to which any requested channels are allocated. The codes are as follows:

Commercial	
Personal Communications Service	
Broadband	CW
Narrowband	CN
Cellular Radiotelephone Service	CL
Paging and Radiotelephone Service	CD
Air-ground Radiotelephone Service	CG
Offshore Radiotelephone Service	CO
Rural Radiotelephone Service	CR
Specialized Mobile Radio	
806–821/851–866 MHz, conventional.	GX
806–821/851–866 MHz, trunked	YX
896–901/935–940 MHz, conventional.	GR
896–901/935–940 MHz, trunked	YS
220 MHz Systems	
Nationwide Non-Commercial 10 Channel.	NL
Nationwide Non-Commercial 5 Channel.	NS
Nationwide Commercial 5 Channel	NC
Non-Nationwide 5 Channel Trunked.	QT
Non-Nationwide Data	QD
Non-Nationwide Public Safety/Mutual Aid.	QM
Non-Nationwide Other	QO
Industrial	
Business Radio Service	
806–821/851–866 MHz, conventional.	GB
806–821/851–866 MHz, trunked	YB
896–901/935–940 MHz, conventional.	GU

896–901/935–940 MHz, trunked	YU
929–930 MHz paging systems	GS
Other	IB
Industrial services, except Business Radio Service	
806–821/851–866 MHz, conventional.	GO
806–821/851–866 MHz, trunked	YO
896–901/935–940 MHz, conventional.	GI
896–901/935–940 MHz, trunked	YI
Other:	
Forest Products Radio Service	IF
Petroleum Radio Service	IP
Special Industrial Radio Service	IS
Telephone Maintenance Radio Service.	IT
Film and Video Production Radio Service.	IV
Power Radio Service	IW
Manufacturers Radio Service	IX
Relay Press Radio Service	IY
Land Transportation	
Land Transportation services	
806–821/851–866 MHz, conventional.	GO
806–821/851–866 MHz, trunked	YO
896–901/935–940 MHz, conventional.	GI
896–901/935–940 MHz, trunked	YI
Other:	
Automobile Emergency Radio Service.	LA
Railroad Radio Service	LR
Taxicab Radio Service	LX
Interurban Passenger Radio Service	LI
Interurban Property Radio Service	LJ
Urban Passenger Radio Service	LU
Urban Property Radio Service	LV
Public Safety	
National Plan	
821–824/866–869 MHz, conventional.	GF
821–824/866–869 MHz, trunked	YF
Public Safety services	
806–821/851–866 MHz, conventional.	GP
806–821/851–866 MHz, trunked	YP
896–901/935–940 MHz, conventional.	GA
896–901/935–940 MHz, trunked	YA
Other:	
Fire Radio Service	PF
Highway Maintenance Radio Service.	PH
Local Government Radio Service	PL
Emergency Medical Radio Service	PM
Police Radio Service	PP
Forestry Conservation Radio Service.	PO
Special Emergency	
Special Emergency Radio Service	PS
Other	
Low Power Auxiliary Broadcast	LP
Remote Pickup Auxiliary Broadcast	RP
Radiolocation Radio Service	RS

Item 27 This item requests a two-letter code indicating the type of operation proposed. This item must be completed for radio services governed by Part 22. It may be omitted for applications in all other services. The codes are as follows:

One-way paging	OP
Response paging	RP
Two-way mobile telephone	TT
Two-way mobile data	TD
Two-way mobile telephone, data & images.	TB
Two-way mobile communications	TC
Dispatch	DP
Rural radiotelephone, conventional	RR
Rural radiotelephone, BETRS	RB
Air-ground radiotelephone	AR
Point-to-point	PP
Point-to-multipoint	PM
Other	NS

Environmental Policy

Item 28 This item is required for compliance with the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4335. See also Part 1, Subpart I of the FCC rules (47 CFR 1.1301–1.1319). This item must be answered, either "Y" or "N". Answer "Y" if an FCC grant of the proposed facility may have a significant environmental effect as defined in § 1.1307 of the FCC rules and attach an exhibit with the required environmental assessment. Use 28A as the item number for this attachment. Examples of facilities that may have a significant effect on the environment include:

- An antenna structure located in a residential area (as defined by applicable zoning laws) which will utilize high intensity aviation obstruction lighting
- A facility located in an officially designated wilderness area, wildlife preserve or floodplain
- A facility that affects a site significant in American history
- A facility, the construction of which involves extensive changes in surface features

Alien Ownership

Items 29–33 These items request indications and information that enable the FCC to determine whether or not an applicant is eligible under Section 310 of the Communications Act of 1934, as amended, to hold a station license. Item 29 must be answered, either "Y" or "N". Items 30–33 must be answered on applications for authority to provide commercial mobile service, but may be omitted on other applications. The FCC can not grant an authorization to a foreign government or the representative of a foreign government. Therefore, if the true and correct answer to Item 29 is "Y", the applicant is not eligible for a license and the FCC will dismiss the application, if filed, without further consideration. Likewise, the FCC can not grant an authorization to provide commercial mobile radio service to any applicant for which the true and correct answer to Item 30, 31 or 32 is "Y". If the answer to Item 33 is "Y" and the application is for authorization to provide commercial mobile radio service, attach an exhibit explaining the nature and extent of any foreign ownership or control. Use 33A as the item number for this exhibit.

Basic Qualifications

Items 34–38 These items request indications and information that enable the FCC to determine whether an applicant is disqualified from holding an FCC authorization because of misconduct. Items 34–36 must be answered "N" if there is no misconduct. Item 37 must be answered "N" if the applicant is not a party in any pending matter relevant to misconduct. Item 38 must be answered "Y" if the applicant is not subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988 (21 U.S.C. § 862). If the answer to Items 34, 35, 36 or 37 is "Y" or if the answer to item 38 is "N", attach as an exhibit a statement explaining the circumstances and why the applicant believes that an FCC grant of the application would be in the public interest notwithstanding the actual or alleged misconduct. Use 34A, 35A, 36A, 37A or 38A as the item number(s) for such exhibits, respectively.

Certification

Items 39–43 These items must be completed. To be acceptable for filing, applications and amendments must be signed in accordance with Part 1 of the FCC rules. The signer must be a person authorized to sign the application. Paper originals of applications must bear an original signature. Neither rubber-stamped nor photocopied signatures are acceptable.

The Schedules

The purposes of the schedules are as follows:

Schedule A

One Schedule A is required for each application or amendment in the radio services governed by Part 22 or Part 24 of FCC rules. These services are the Personal Communications Service, the Cellular Radiotelephone Service, the Paging and Radiotelephone Service, the Rural Radiotelephone Service, the Offshore Radiotelephone Service and the Air-ground Radiotelephone Service. Schedule A indicates the purpose of the filing. It is the only schedule needed for initial systems where no site specific data is being submitted, and for requests for extension of time to construct facilities. Schedule A must not be filed with Schedules D or E.

Schedule B

Schedule B is used when site-specific data is required for applications, amendments or notifications involving individual channel assignments, in the radio services for which Schedule A is required. At least one Schedule B must be filed for each location for which data is required. Schedule B provides location data, information concerning proximity to market boundaries, technical information concerning the antennas and transmitters at the particular location, radial power and antenna height data, and information about points of communication for transmitters at the particular location. Each Schedule B can hold data for multiple antennas at one location by using additional copies of page 2. For each antenna, Schedule B can hold data for up to four transmitters and/or channels. Additional Schedule Bs may be filed for the same location or antenna if necessary.

Schedule C

Schedule C is used when site-specific data is required for applications, amendments or notifications in the radio services for which Schedule A is required and for which spectrum is assigned in channel blocks. One Schedule C must be filed for each location for which data is required. Schedule C provides location data, technical parameters of the facility at the particular location, radial power and antenna height data.

Schedule D

Schedule D is required for applications and amendments in all radio services for which Form FCC 600 may be used, except those for which Schedule A is required. It provides additional administrative data for stations in these services.

Schedule E

Schedule E is required for applications and amendments in all radio services for which Form FCC 600 may be used, except those for which Schedule A is required. It provides station location data for stations in these services.

Schedule F

Schedule F is required when permanent location data is submitted on Schedule B, C or E. However, in some services (e.g. PCS), applicants may need to obtain antenna clearance independent of the system authorization by filing Form FCC 854. See the pertinent part(s) of the FCC rules.

Schedule G

Schedule G is required for applications and amendments in all radio services for which Form FCC 600 may be used, except those for which Schedule A is required. It provides technical data for stations in these services. The reverse side of Schedule G provides for additional frequencies. Additional Schedule Gs may be filed if necessary.

Schedule H

Schedule H is required for applications and amendments in the Remote Pickup Broadcast Auxiliary Radio Service for permanent location stations and for land mobile stations operating on frequencies lower than 27.5 MHz. Failure to include this schedule when required will result in the return of the application without further action. Land mobile stations located near international borders that seek protection from interference should complete Schedule H.

Schedules Required (Other Than Part 22 and Part 24)

If the application to be submitted includes fixed or permanent location stations (A–F), complete the Main Form, Schedule D, Schedule E, Schedule F and Schedule G. Schedule H must also be completed for fixed location stations proposed in the Remote Pickup Broadcast Auxiliary Radio Service.

If the application to be submitted includes only control stations meeting the 20 foot criteria, mobile, temporary or itinerant locations (G–Z), complete Form 600 Main Form, Schedule D, Schedule E and Schedule G.

Schedule H must also be completed for all stations proposing to operate on frequencies below 27.5 MHz.

Note: The Main Form and applicable schedules should be submitted as one package, stapled in the upper left corner. The Main Form should be first with the following schedules in alphabetical order.

Specific Instructions for Schedule A Administrative Information

Purpose of Filing

Item A1 This item states the purpose(s) for the filing. Enter one or more letters corresponding to the listed purposes. If none of the listed purposes correctly describe the reason for the filing, or if the filing requests a waiver of one or more FCC rules or an extension of time to construct facilities, attach as an exhibit a narrative description of the purpose, circumstances and/or waiver request including required justification. Use A1A as the item number for this exhibit.

Market/Channel Block

Item A2 This item must be answered only if the filing is for an authorization in one of the radio services that is licensed on a geographic licensing area or "market" basis (e.g. Cellular Radio Service). It identifies the market to which the filing pertains. The market designators are listed in FCC Public Notices or in the FCC Record. This item should not be answered for filings in radio services licensed on a station-by-station basis.

Item A3 This item must be answered only if the filing is for an authorization in one of the radio services for which spectrum is assigned in channel blocks. For filings in the Cellular Radio Service, the answer to this item is either "A" or "B". For filings in the Air-ground Radiotelephone Service (commercial aviation), the answer to this item is "C–" followed by a number between 1 and 29 (e.g. C–17). This item should not be answered for filings in radio services in which channels are individually assigned.

Item A4 This item must be answered only if the filing is for an authorization in one of the radio services that is licensed on a geographic licensing area or "market" basis and the market has been subdivided.

Item A5 This item must be answered only if the filing is for an authorization in one of the radio services that is licensed on a geographic licensing area or "market" basis (e.g. Cellular Radio Service). In addition to item A2, it identifies the market to which the filing pertains. The market names are listed in FCC Public Notices or in the FCC Record. This item should not be answered for filings in radio services licensed on a station by station basis.

Control Points

Items A6–A9 These items provide the location(s) of the station or system control points, and the telephone number(s) where a person responsible for operation of the station or system could be reached, if necessary. These items must be answered only for new systems or stations and when a control point is to be added, deleted or modified. These items do not have to be answered for broadcast subcarrier paging (i.e. if the answer to item A1 is "O"). If a control point modification is the only purpose of the filing, answer item A1 "S" and file Schedule A as an attachment to Form FCC 489, rather than Form FCC 600. To move an existing control point or change a telephone number, delete the old information and add the new.

Facilities not Constructed

Items A10–A12 These items must be completed only in connection with (1) filings that request an extension of time to construct specific facilities in services where locations are individually subject to a construction period requirement, and the rest of the station or system has been completed; (2) notifications, using Schedule A as an attachment, reporting that a system has been partially constructed. In some cases where more than one antenna or transmitter is authorized at a location, and some but not all of the facilities have been constructed, it may be necessary to further distinguish the unconstructed facilities by channel. If so, indicate the affected channels in an exhibit, using item number A10A.

Specific Instructions for Schedule B Technical Data—Individual Channel Assignment

Location

Item B1 This item indicates what action the filer wants the FCC to take in the database with regard to the location specified in items B2–B10. If the filing is for a new station or system or for a new location in an existing system or station (i.e. the location does not already exist on any channel in the authorized system or station or in a pending application for the same system or station), the answer is this item is "A". If the location is an existing location in the authorized system or station or a location proposed in a pending application for the same system or station, and *the licensee has abandoned or intends to abandon the location completely*, the answer to this item is "D". (Also see the instruction for items B11–B14 below.) In all other cases, the answer to this item is "M". If the filer answers this item "A" and the FCC computer finds an exact match for the location within the system or station, the Schedule B will be processed as if this item had been answered "M". If the filer answers this item "M" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule B will be processed as if this item had been answered "A". If the filer answers this item "D" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule B will not be processed.

Item B2 This item is the FCC assigned location number for an existing location, or for a new location, a letter (e.g. A, B, C etc). In either case, this item is used as the key to identify the location on Schedule F (if Schedule F is filed).

Items B3–B6 These items identify the location by its address or, if there is no address, by a brief description of the location such as a distance and direction from known landmarks (e.g. "5 km south of Anytown, US").

Items B7, B8, B9 and B10 These items are the geographic coordinates of the location. Items B7 and B8 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1927. Items B7 and B8 are required. Items B9 and B10 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1983. Items B9 and B10 are optional, but may assist processing of the Schedule B.

Items B11–B14 These items key to location data in the database that is to be replaced by the data in items B3–B10. The filer should complete these items only if (1) correcting geographical coordinates or (2) relocating *all* facilities at the location indicated by these items to the location specified in items B3–B10. The filer must *not* complete these items if the intent is to relocate some, *but not all*, of the facilities at a particular location. (In such a case, the filer must submit two Schedule Bs with the filing—one to delete the facilities at the previous location and another to add those facilities at the new location.)

Supplementary Location Information

Item B15 This item is optional and concerns proximity of the location to Canada. If the filer does not know whether the location is North of Line A or East of Line C, this item should be left blank. If the filer answers "A" or "C" (and this appears to be plausibly correct), the FCC will initiate applicable coordination procedures with the Government of Canada. In the event the filer needs to submit additional information regarding coordination of a channel assignment with the Government of Canada, this should be attached as an exhibit, using item number B15A.

Item B16 This item is optional and concerns proximity of the location to Mexico. If the filer does not know whether the location within 200 kilometers (124 miles) of the U.S.-Mexico border, this item should be left blank. If the filer answers "Y" (and this appears to be plausibly correct), the FCC will initiate applicable coordination procedures with the Government of Mexico. In the event the filer needs to submit additional information regarding coordination of a channel assignment with the Government of Mexico, this should be attached as an exhibit, using item number B16A.

Items B17–B19 These items must be completed only for filings in the narrowband Personal Communications Service (other than nationwide and response channel related filings).

Antenna

Item B20 This item indicates what action the filer wants the FCC to take in the database with regard to the antenna specified in items B22–B28. If the filing is for a new antenna (i.e. the antenna does not already exist at this location for any channel in the authorized system or station or in a pending application for the same system or station), the answer to this item is "A". If the antenna is an existing antenna in the authorized system or station or an antenna proposed in a pending application for the same system or station, and *the licensee has abandoned or intends to abandon the antenna completely*, the answer to this item is "D". In all other cases, the answer to this item is "M". If the filer answers this item "A" and the FCC computer finds an exact match for the antenna within the system or station, this, this portion of the Scheduled B will be processed as if this item had been answered "M". If the filer answers this item "M" and the FCC computer cannot find an exact match for the specified antenna within the system or station, this portion of the Schedule B will be processed as if this item had been answered "A". If the filer answers this item "D" and the FCC computer cannot find an exact match for the specified antenna within the system or station, this portion of the Schedule B will not be processed.

Item B21 This item indicates whether the antenna in question is already authorized or whether it is only proposed in a pending application. The filer must answer this item.

Item B22 This item indicates the FCC antenna number of the antenna. If a number has been printed on an authorization the applicant knows it, he or she should complete this item.

Items B23–28 This item describes the antenna by its type, manufacturer and model number, and must be completed for all filings except for those in the Air-ground Radiotelephone Service. Type means a generic description (e.g. collinear vertical, Yagi, panel array). Manufacturer is the name of the company that made the antenna, and model number is the designation that the manufacturer assigns to the antenna. If a polar plot of the antenna horizontal or vertical radiation pattern is required by the pertinent FCC rules, attach as an exhibit such plot (or in the case of electronic or magnetic filing, substitute a table of the polar data for

360° in 5° increments in the format: bearing, gain $_{dBd}$), using item number B25A.

Items B26 & B28 These items report the actual and effective height at which the antenna is mounted. These items must be completed for all filings except for those in the Air-ground Radiotelephone Service.

Item B27 This item provides the beamwidth of the main major lobe of a directional antenna used with a fixed station. This item need not be completed for any stations other than fixed stations.

Transmitters for Antenna

Item B29 This item is the FCC transmitter number for the transmitter.

Item B30 This item indicates what action the filer wants the FCC to take in the database with regard to as many as four transmitters (or channels) associated with the (same) antenna. If the filing is for a new transmitter or channel (i.e., a transmitter or channel that does not already exist for this antenna at this location in the system or station or in a pending application for the same system or station), the answer to this item is "A". If the transmitter or channel already exists for this antenna at this location in the authorized system or station or for an antenna at this location proposed in a pending application for the same system or station, and *the licensee has abandoned or intends to abandon the transmitter or channel completely*, the answer to this item is "D". In all other cases, the answer to this item is "M". If the filer answers this item "A" and the FCC computer finds an exact match for the transmitter or channel for this antenna at this location within the system or station, this portion of the Schedule B will be processed as if this item had been answered "M". If the filer answers this item "M" and the FCC computer cannot find an exact match for the specified transmitter or channel for this antenna at this location within the system or station, this portion of the Schedule B will be processed as if this item had been answered "A". If the filer answers this item "D" and the FCC computer cannot find an exact match for the specified transmitter or channel for this antenna at this location within the system or station, this portion of the Schedule B will not be processed.

Item B31 This item specifies the center frequencies of the channels on which the transmitters operate or are proposed to operate. The pertinent channel(s) must be specified for each transmitter.

Item B32 This item requests a four letter code that identifies the transmitter class. The four letter code consists of two letters that conform to the international station classification nomenclature used by the International Frequency Registration Board, followed by two letters that further classify the transmitter by usage. The codes are as follows:

Base	FBBS
Standby	FBST
Mobile subscriber	MLSB
Dispatch	FXDI
Auxiliary test	FXTS
Control	FXCT
Repeater	FXRP
Fixed relay	FXRX
Ground	FBGS
Air-ground signaling	FBSI
Inner-office	FXIO
Fixed subscriber	FXSB
Control office	FXCD

Item B33 This item should be completed only if the filing requests authority to use an emission type that is not already authorized in the FCC rules for use by all stations in the pertinent radio service.

Item B34 This item reports the maximum effective radiated power (ERP) in any direction on the specified channel. This item must be completed for all transmitter filings. The answer must be stated in Watts.

Radial Data for Antenna

Item B35 This item reports the height of the antenna center of radiation above the average terrain elevation (AAT) along each of the eight cardinal radials. This item must be completed for all antenna filings except for those in the Air-ground Radiotelephone Service.

Items B36–B39 These items report the effective radiated power (ERP) for each transmitter or channel in each of the eight cardinal radial directions. These items must be completed for all transmitter filings except for those in the Air-ground Radiotelephone Service.

Points of Communication for Antenna

Items B40–B45 These items describe fixed points of communication for (1) stations in the Rural Radiotelephone Service serving individually licensed subscribers, and (2) point-to-multipoint transmitters operating on channels that are assigned only to stations that communicate with four or more points. These items should not be completed by filers for any other purpose.

Specific Instructions for Schedule C Technical Data—Block Channel Assignment

Location

Item C1 This item indicates what action the filer wants the FCC to take in the database with regard to the location specified in items C3–C10. If the filing is for a new station or system or for a new location in an existing system or station (i.e., the location does not already exist in the authorized system or station or in a pending application for the same system or station), the answer to this item is "A". If the location is an existing location in the authorized system or station or a location proposed in a pending application for the same system or station, and *the licensee has abandoned or intends to abandon the location completely*, the answer to this item is "D". (Also see the instruction for items C11–C14 below.) In all other cases, the answer to this item is "M". If the filer answers this item "A" and the FCC computer finds an exact match for the location within the system or station, the Schedule C will be processed as if this item had been answered "M". If the filer answers this item "M" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule C will be processed as if this item had been answered "A". If the filer answers this item "D" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule C will not be processed.

Item C2 This item is the FCC assigned location number for an existing location, or for a new location, a letter (e.g., A, B, C, etc.). In either case, this item is used as the key to identify the location on Schedule F (if Schedule F is filed).

Items C3–C6 These items identify the location by its address or, if there is no address, by a brief description of the location such as a distance and direction from known landmarks (e.g., "5 km south of Anytown, US").

Items C7, C8, C9 and C10 These items are the geographical coordinates of the location. Items C7 and C8 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1927. Items C7 and C8 are required. Items C9 and C10 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1983. Items C11 and C12 are optional, but may assist processing of the Schedule C.

Items C11–C14 These items key to location data that is to be replaced by the data in items C3–C10 in the data base. The filer should complete these items only if (1) correcting geographic coordinates or (2) relocating *all* facilities at the location indicated by these items to the location specified in items C3–C10. The filer must *not* complete these items if the intent is to relocate some,

but not all, of the facilities at a particular location. (In such a case, the filer must submit two Schedule Cs with the filing—one to delete the facilities at the previous location and another to add those facilities at the new location.)

Technical Parameters

Items C15, C16 These items report the actual and effective height at which the antenna is mounted. These items must be completed for all filings except for those in the Air-ground Radiotelephone Service.

Item C17 This item reports the maximum radiated power (ERP) of the facility in any direction. This item must be completed for all transmitter filings. The answer must be stated in Watts.

Radial Data

Item C18 This item reports the height of the antenna center of radiation above the average terrain elevation (AAT) along each of the eight cardinal radials. This item must be completed for all Schedule C filings except for those in the Air-ground Radiotelephone Service.

Item C19 This item reports the effective radiated power (ERP) in each of the eight cardinal radial directions. This item must be completed for all Schedule C filings except for those in the Air-ground Radiotelephone Service.

Item C20 This item reports the calculated radial distance to the service area boundary (SAB) from the specified location. This item is required only for filings in the Cellular Radiotelephone Service.

Item C21 This item reports the determined radial distance to the Cellular Geographic Service Area (CGSA) from the specified location. This item is required only for filings in the Cellular Radiotelephone Service.

General Instructions for Schedule D, E, F, G and H

LOC letters A through F carry through on Schedule E Items E2–E8, Schedule F Items F1–F13, Schedule G Items G1–G8, and Schedule H Items H1–H5. It is requested that the applicant begin by inserting the parameters of the principal base or mobile relay station on LOC line "A" (plus any other different class of station at that location), followed by control station, fixed relay stations, etc. When more than one class of station is proposed to be at a common location, use the same permanent location letter A through F and a separate horizontal line entry for each class of station, and furnish the information required by the schedules for each separate class of station. For example, if it is proposed to install a base station, a mobile relay station, and a fixed relay station at common location "A", the appropriate information must be entered on three (3) separate horizontal lines. The next separate permanent location would use letter "B", etc.

Note: Applicants for all control stations in the 470–512 MHz band (except those licensed under Part 22 of the FCC rules) must use LOC letters A–F and furnish the information required by the schedules.

In the 470–512 MHz band, applicants for mobile units, itinerant stations and stations at temporary locations must furnish the information requested in Schedule E Items E9–E12 and Schedule G Items G1–G6. In the 220–222 MHz and above 512 MHz, applicants for control stations with antenna heights meeting the 20 foot criteria and/or for mobile units, itinerant stations and stations for temporary locations must furnish the information requested in Schedule E Items E9–E12 and Schedule G Items G1–G6. Below 470 MHz except 220–222 MHz, applicants for control stations with antenna heights meeting the 20 foot criteria, itinerant stations, stations at temporary locations, and mobile units must furnish the information requested in Schedule E Items E9–E12 and Schedule G Items G1–G5. Since LOC letters A through F are reserved for permanent location stations, entries for control stations meeting the 20 foot criteria (excluding 470–512 MHz) may be inserted on one line.

If your application is approved, a license will be mailed to you. This authorization permits you to commence operations. (Note: It is a violation of Federal Law to begin transmitting prior to obtaining an authorization.) If an application is incomplete or filled out incorrectly, it will be returned or dismissed along with the reasons for this action. Applications which are not in good order will take additional time to process. You are, therefore, urged to be very careful when completing the application. Each entry on the Form 600 must be complete in itself. Do NOT use entries such as "On File", "No Changes", "Does Not Apply"', "Same as * * *", etc.

Applications for modification of existing station authorizations MUST include all current station information in addition to all items being modified. (See Schedule D Item D3).

Specific Instructions for Schedule D Administrative Data

Enter the Licensee Name, Radio Service and Call Sign or Station Location city and state.

Purpose of Filing

Item D1 Enter the purpose of this filing in the brackets.

N=New Station—Place an N in the brackets to indicate that this is an application for a radio station not presently licensed in the service listed in Item 26 on page 1 of the Form 600 Main Form.

M=Modification—Place an M in the brackets to indicate a desired change in the conditions of a license(s) during the current authorized period. See applicable Commission rules. Use Item D3 to describe the change(s) desired. Complete the form in full as for a new station. (Note: Once a license(s) is modified, all previous copies of the license(s) are no longer valid regardless of the expiration date shown.)

R=Renewal—Place an R in the brackets to indicate that you wish to renew an existing authorization that has not expired.

X=Reinstatement of Expired Authorization—Place an X in the brackets to indicate reinstatement of an expired authorization. Complete the form in full as for a new station. Licenses that have been expired more than 30 days cannot be reinstated. In these cases, the former licensee should submit a completed application including required frequency coordination for a *new* license.

A=Assignment of Authorization—Place an A in the brackets to indicate the request for an assignment of the right, title, and interest to a station presently authorized to another person or entity. Prepare the application in your own name and complete it in the same manner as for a new station with all questions answered and include a detailed statement of your eligibility for Item D12. Include a letter from the assignor meeting the requirements of the Commission's rules. For your convenience, FCC Form 1046, "Assignment of Authorization" may be obtained from any Commission office for this purpose.

Note: If the purpose of filing is Renewal, Reinstatement of Expired Authorization or Assignment of Authorization and a modification to the license is also required, use Item D3 to describe the changes.

Item D2 If your application is for a new station, leave Item D2 blank. If you are changing to system licensing, list the existing call signs assigned to the system and indicate which of your existing fixed call signs you would prefer to retain by listing that call sign first.

Item D3 If the application is intended to modify a current license(s), indicate the modification(s) proposed.

Applications for modification of existing station authorizations must include all current station information in addition to all items being modified. (Note: Certain modifications may require new frequency coordination or notification to the FAA—See Part 17 of the FCC Rules and Part 77 of the FAA Rules).

Associated Call Signs

Item D4 List any call sign(s) which is part of the system and licensed separately.

Point of Contact

Items D5–D6 Enter the street address, city, state and voice telephone number (including the area code) of the contact point.

Associated Broadcast Station

Items D7–D9 Complete these items for the Broadcast Auxiliary Radio Services only. Enter the parent station call sign, parent station city and parent station state.

Market Area

Item D10 This item must be answered only if the filing is for an authorization in one of the radio services that is licensed on a geographic licensing area or "market" basis. It identifies the market to which the filing pertains. The market designators are listed in FCC Public Notices or in the FCC Record. This item should not be answered for filings in radio services licensed on a station by station basis.

Paging Operations

Item D11 List the number of paging receivers in this system.

Eligibility

Item D12 Provide a statement that clearly indicates your qualifications for the chosen service. This statement should include:

(1) A general description of your business or activity.

(2) A description of how radio will be employed in the activity.

(3) Any other information which you believe will aid in a determination of your eligibility for the service requested.

Note: Failure to provide clear and complete details justifying eligibility will result in return or dismissal of your application. Do not use terms such as "No Change" or "On File".

Item D13 Enter the number and paragraph of the FCC Rule Section which describes the eligibility for the particular radio service you specified in Item 26 on page 1 of FCC Form 600 Main Form.

Frequency Coordination Number

Item D14 This item will be completed by the appropriate certified frequency coordinators for those applicants who are required to comply with the frequency coordination requirements.

Specific Instructions for Schedule E Station Location Data

The Form 600 Schedule E has been designed to accommodate six (6) permanent locations. LOC letters A through F are to designate the separate locations. No more than six (6) different permanent locations may be licensed under one call sign. LOC letters A through F for items E2–E8 correspond to LOC letters A through F on Schedules F, G and H. Enter the Licensee Name, Radio Service and Call Sign or Station Location city and state.

Item E1 The latitude and longitude for locations in the United States and the Carribean Islands must be referenced to either the North American Datum of 1927 (NAD 27) or 1983 (NAD 83). Enter "2" for NAD 27 or "8" for NAD 83. For locations in other areas, enter "O" for Other and specify the datum used. Topographical maps will indicate which datum is used. All coordinates shown on this filing must be calculated using the same datum.

Fixed or Permanent Locations

Item E2 Enter the street address or specific geographic description for the transmitter antenna location for each station listed for LOC letters (A) through (F). (P.O. Box or geographic coordinates are not acceptable.)

Item E3 Enter the name of the city or town in which the transmitter antenna is located for LOC letters (A) through (F). For rural or unincorporated areas, enter the nearest city or town to the transmitter antenna location.

Item E4 Enter the name of the county in which the transmitter antenna is located for each station listed for LOC letters (A) through (F).

Item E5 Enter the two letter abbreviation for the state in which the transmitter antenna is located for LOC letters (A) through (F). The abbreviations for each state are provided in Table 1 on the reverse of Form 600 Schedule E.

Item E6 Enter the geographic coordinates of latitude in degrees, minutes, and seconds to the nearest second for LOC letters (A) through (F). "N" for north will be assumed. Enter "S" south.

Item E7 Enter the geographic coordinates of longitude in degrees, minutes, and seconds to the nearest second for LOC letters (A) through (F) "W" for west will be assumed. Enter "E" for east.

Item E8 Enter to the nearest meter the elevation above mean sea level of the ground at the antenna location for LOC letters (A) through (F). This information can be determined using a 7.5 minute topographical quandrangle map of the area or you may consult the city or county surveyor in your area. Topographical maps may be purchased from the U.S. Geological Survey, Washington, DC 20242 or from its office in Denver, Colorado 80225. See antenna figure examples on Schedule F (c=ground elevation above mean sea level).

Controls Meeting the 20 Foot Criteria, Mobile or Temporary Locations

Item E9–E12 These items are for mobile units, stations operating at temporary locations, itinerant stations and control stations meeting the 20 foot criteria. Location letters G through Z should correspond with location letters G–Z on Schedule G. For example, H 30 kilometer radius of Station A, I 30 kilometer radius of Station B.

For *control stations* meeting the 20 foot criteria, enter the location letter associated with the control station(s) frequencie(s) on Schedule G and the primary control state in item E11.

For *mobile, temporary and itinerant operations*, enter the location letter associated with the mobile, temporary or itinerant frequencie(s) on Schedule G.

Area of Operation Codes to be Used in Completing Item E10:

A–F = Centered around permanent station A–F
P = Centered around the operating area other than A–F
S = Statewide operations within a single state
N = The 48 contiguous states
O = Includes Hawaii, Alaska, territories or possessions

If the area of operation is centered around permanent stations (A–F), enter the location letter, complete Item E9 with the radius in kilometers of the normal area of operation and E10 with the appropriate permanent station location letter A–F. For example, H 45 kilometer radius of station A.

In the event a specific mile radius of station A is an inadequate description for your system, the application is for mobile only, stations operating at temporary locations or for itinerant stations, enter the location letter, in item E9 enter a radius in kilometers, in item E10 enter "P", in item E11 enter the geographical coordinates (latitude and longitude in degrees, minutes and

seconds), the county and state of the center of the operating area. For example, H50 kilometer radius of 42–29–47, 87–41–16, Cook County, IL.

For statewide operations within a single state, enter the location letter. In item E10 enter "S" and in item E11 enter the abbreviation for the state (See Table 1 on the reverse of Form 600 Schedule E). If the state you are operating in is Alaska, enter "W" in item E12 if your operations are west of Line C. If your operations are east of Line C, enter "E" in item E12 (Line C=144 degrees Longitude).

If your area covers the 48 contiguous states, enter the location letter, in item E10 enter "N" and in item E11 enter "US" for the state. Complete item E12 with "S" if your operations will be South of Line A. If operations will be North of Line A, complete item E12 with "N". See Appendix 1 for a list of counties by state, having areas north of Line A following Schedule H instructions.

If your area includes, in addition to the 48 contiguous states, Hawaii, Alaska, territories or possessions, enter a separate line for each additional state, territory or possession by including its respective two letter state code. Enter the location letter, in item E10 enter "O", and in item E11 enter the singular two letter state code. If operating in Alaska west of Line C, enter "W" in item E12. If operating in Alaska east of Line C, enter "E" in item E12 (Line C=144 degrees Longitude).

Specific Instructions for Schedule F Antenna Structure Data

Schedule F must be completed and filed when permanent location data is submitted on Schedules B, C or E, except if Form 854 is required. Enter the Licensee Name, Radio Service and Call Sign or Station Location city and state.

If you completed Schedule E, LOC letters A–F for items F1–F13 correspond to LOC letters A through F on Schedule E.

Item F1 If you completed Schedule B or C, Location Number is used as the key to associate with item B10 on Schedule B and item C10 on Schedule C. Enter a Location Number.

Item F2 If your antenna will be mounted on a structure with an existing antenna, enter "E". If you propose to construct a new structure or use one which contains no existing licensees, enter "N". The term "existing antenna" applies to any structure with an antenna which is presently utilized by existing licensees.

Item F3 If item F2 is "E", enter the call sign of one existing licensee using the structure.

Item F4 If item F3 is completed, enter the radio service for that call sign.

Item F5 Enter the full legal name of the owner of the antenna structure. If the owner is:

1. an individual doing business in his/her own name, enter last name, first name, middle initial.

2. an individual doing business under a firm or company name (sole proprietorship), enter both the individual's name and the firm or company name. "Doing business as" may be abbreviated as "dba".

3. a partnership doing business under a firm or company name, enter the full name of the partnership.

4. an unincorporated association, enter the name of the association.

5. a corporation or governmental entity, enter the full legal name of the entity.

Enter the area code and telephone number.

Item F6 See antenna figure examples 1–3 on the reverse of Form 600 Schedule F. Indicate the number of the figure which most resembles your antenna structure.

Item F7 Enter the type of supporting structure on which the antenna is or will be mounted (i.e., building, tower, tank, silo, building/tower, etc).

Item F8 Enter the height above ground in meters, to the highest point of the *supporting structure only.* For instance, if the antenna structure consists of a building/tower combination, include any elevator shaft, flag pole, or penthouse in the support structure height, but not the antenna, tower, pole or mast. If the antenna structure is a tower only, include the height of the tower but not the antenna. Refer to letter "b" in the antenna figure examples on the reverse of Form 600 Schedule F.

Item F9 Enter the overall height above ground in meters, of the entire antenna structure to the highest point, including any appurtenances. You must include antennas, dishes, obstruction lighting. Refer to letter "d" in the antenna figure examples on the reverse of Form 600 Schedule F.

Item F10 Enter the FCC assigned tower number if the tower is existing and the number is known.

Item F11 If a Notice of Construction or Alteration has been filed with the FAA, enter "Y". If a Notice of Construction or Alteration has not been filed, enter "N". You must notify the Federal Aviation Administration on FAA Form 7460–1 (obtainable from any FAA office), with certain limited exceptions as set forth in Part 17 of the FCC Rules and Part 77 of the FAA Rules, of any of the following construction or alterations of an antenna structure:

(1) Construction of any new antenna structure or alteration of any existing antenna structure, which would result in the top of the antenna or the antenna structure exceeding a height of 61 m (200 feet) above ground level at the antenna site.

(2) Construction of any new antenna structure or alteration of any existing structure, which would result in the top of the antenna or the antenna structure exceeding the height of an imaginary surface extending outward and upward at one of the following slopes:

(a) 1 m above the airport elevation for each 100 m from the nearest runway longer than 1 km within 6.1 km of the antenna structure, excluding helicopter and seaplane bases with specified boundaries, if that airport is either listed in the Airport Directory of the current Airman's Information Manual or is operated by a Federal military agency.

(b) 2 m above the airport elevation for each 100 m from the nearest runway shorter than 1 km within 3.1 km of the antenna structure, excluding helicopter and seaplane bases without specified boundaries, if that airport is either listed in the Airport Directory or is operated by a Federal military agency.

(c) 4 m above the airport elevation for each 100 m from the nearest landing and takeoff area within 1.5 km of the antenna structure of each heliport listed in the Airport Directory or that is operated by a Federal military agency.

(3) Any construction of an antenna structure (or any alteration of an antenna structure that would increase its height) on an airport listed in the Airport Directory of the current Airman's Information Manual.

(4) When requested by the FAA, any construction or alteration that would be in an instrument approach area (defined in the FAA standards governing instrument approach procedures) and available information indicates it might exceed an obstruction standard of the FAA.

If you intend to install towers of unusual height or at locations in close proximity to aircraft landing areas, it will be to your advantage to discuss the location and height of the antenna in detail with the appropriate FAA area office before filing your application.

Item F12 If item F11 was answered "Y" (yes), enter the date filing was made with the FAA.

Item F13 If item F11 was answered "Y" (yes), enter the name of the regional FAA office where the filing was made.

Item F14 If item F11 was answered "Y" (yes), enter the FAA assigned Aeronautical Study Number if known.

Specific Instructions for Schedule G Technical Data

Enter the Licensee Name, Radio Service and Call Sign or Station Location city and state.

LOC letters for items G1 through G8 correspond to LOC letters on Schedules E, F and H. Enter the LOC letter if other than letter A.

Item G1 Enter the specific frequency(ies) in megahertz. The requested frequency(ies) must be available in the Commission's rules governing the radio service in which you are seeking eligibility. Use a separate line for each frequency, except that 800 MHz SMRS mobile(s) and control(s) are now designated by frequency range "806–821" and 900 MHz SMRS mobile(s) and control(s) are now designated by frequency range "896–901". Use a different letter (A–F) for each permanent location and refer to Item G2 of these instructions for different classes of stations. When multiple frequencies are used at one station location, the LOC letter of the previous frequency must be entered.

Item G2 Enter the appropriate class of station code from the following table. Definitions for most of these items are listed in the Commission's rules.

STATION CLASS CODE TABLE

Class of Station	Code
Base	FB
Mobile Relay	FB2
Community Repeater	FB4
Private Carrier (Profit)	FB6
Private Carrier (Non-Profit)	FB7
Control	*FX1
Mobile	MO
Mobile/Vehicular Repeater	MO3
Private Carrier Mobile Operation (Profit).	MO6
Private Carrier Mobile Operation (Non-Profit).	MO7
Operational Fixed	FXO
Fixed Relay	FX2
Fixed	**FX
Radiolocation Land	LR
Radiolocation Weather Radar	WDX
Radiolocation Mobile	MR
Secondary Fixed Signalling (for 800 MHz only).	FX3

*Station associated with a mobile relay that employs the same frequency as the associated mobile station for control purposes.

**Station operating on frequencies available for fixed use for control purposes in accordance with applicable rules.

Note: Where appropriate follow each code with "T" for Temporary, "I" for Itinerant, "S" for Standby, "C" for Interconnect, "J" for Temporary Interconnect, "K" for Standby Interconnect, and "L" for Itinerant Interconnect, (e.g., FBT meaning Temporary Base).

Item G3 Enter the number of actual transmitting units at each location. Normally, for a station at a pemanent/fixed location (base, mobile relay, etc.) only one transmitter is involved; therefore, the number "1" should be entered on lines (A) through (F). However, if more than one transmitter is placed at the same location, so indicate. The total number of mobile units is normally the sum of the units to be placed in operation at the time of grant plus the units for which purchase orders have already been signed and will be in use within eight (8) months. There are some exceptions provided for in the rules which should be noted.

For this item vehicular, portable, aircraft, and marine units are considered to be mobiles. Paging receivers should not be counted as mobile units, but must be listed separately in Schedule D, Item D11.

Item G4 Enter the bandwidth and class of emission for each station. Normally, land mobile operations are intended to provide voice communications. The new ITU (International Telecommunications Union) emission designators must be used in place of the old designators. The following provides samples of the corresponding new ITU designators for the most commonly used emission designators.

EMISSION DESIGNATORS

	Old	New
Frequency modulated (FM) voice.	20F3	20K0F3E
Frequency modulated (FM) voice.	13.6F3	13K6F3E
Frequency modulated digitized voice.	20F3Y	20K0F1E
Frequency modulated digitized non-voice.	20F9Y	20K0F1D
Amplitude modulated single sideband voice.	3A3J	3K00J3E
Amplitude modulated (AM) voice.	8A3	8K00A3E

Item G5 When operating with single side band (A3J or new designator J3E) emission enter the peak envelope power, in Watts, followed by the letter "X" which represents peak envelope power in accordance with Appendix 1, ITU Radio Regulations. For operations using A0, A1, A2, A3, A9, F0, F1, F2, F3, and F9 emissions, or the following new emission designators N0N, A1A, A2D, A3E, A9W, F1B, F2D, F3E, and F9W, enter the mean RF output power, in Watts, normally supplied by the transmitter to the antenna feedline. (See applicable rules.)

Note: The power entered should be the minimum required for satisfactory operations.

Item G6 This information is required, for operations above 10 MHz, from applicants requesting new station authorizations, and for major modifications described in the applicable rules.

Enter the effective radiated power. The ERP is the transmitter output power times the net gain of the antenna system. The net gain of the antenna system is the gain of the antenna minus the transmission losses which include losses attributable to the transmission line, duplexers, cavity filters and isolators. The actual formula is: ERP (watts) equals Power (watts) times Antilog (net gain in dB divided by 10).

Item G7 For operations in 220–222 MHz and above 470 MHz, enter the height of the antenna above ground elevation for the average terrain. See the applicable rules for instructions for computing the height above average terrain for the antenna. All other applicants may omit this item.

Item G8 Enter the overall height above ground to the nearest meter of the highest part of your antenna (antenna structure plus the height of the antenna, if top mounted; the total height to the tip of the antenna, if side-mounted). See antenna figures on Schedule F. (a=antenna height to tip)

Specific Instructions for Schedule H Additional Antenna Data

General. All Remote Pick Up Broadcast Auxiliary Radio Service fixed location stations and all stations proposing to operate on frequencies below 27.5 MHz *must* complete Form 600 Schedule H. Failure to do so will result in the return of your application without further action. Land Mobile stations located near international borders that seek protection from interference should also complete Form 600 Schedule H. Form 600 Schedule H may be completed for all other stations if you believe the assumptions made by the FCC would leave your station insufficiently protected internationally. The assumptions are listed under International Registration for other than Parts 22 and 24 Applicants. If you do not provide the actual data and an interference problem arises involving another country's station, your station will be protected only to the limit of the FCC's assumptions. You may have to adjust. This is especially important for stations proposed to be operated in any of the state-counties defined in

Appendix 1 following Form 600 Schedule H instructions.

Instructions for Completion of Individual Items

Enter the Licensee Name, Radio Service and Call Sign or Station Location city and state.

LOC letters for items H1–H5 correspond to LOC letters on Schedules E, F and G. Enter the station LOC letter code.

Item H1 Enter the transmitter frequency in megahertz corresponding to the LOC letter codes (A, B, C, etc.) which uniquely define the station location identified on Schedule E. When multiple frequencies are used at one station location, the station location letter code of the previous frequency must be entered.

Item H2 Enter the angle in the horizontal plane of the transmitting antenna main lobe measured clock-wise with respect to True North in degrees, or enter 360 to indicate the transmitting antenna is non-directional.

Item H3 For directional antennas, enter the total angle in degrees measured horizontally in a plane containing the direction of maximum radiation within which the power radiated in any direction does not fall more than 3 dB below the power radiated in the direction of maximum radiation. This information should be available from the specification sheet included with the antenna at time of purchase.

Item H4 Enter one of the code letters below representing the polarization of the transmitting antenna for those circuits above 27.5 MHz:

E—Elliptical
F—45 Degrees
H—Horizontal
J—Linear
L—Left hand circular
R—Right hand circular
S—Horizontal and Vertical
T—Right and left hand circular
V—Vertical
X—Other (Provide a description)

Item H5 Enter the ratio, in decibels, of the power required at the input of loss-free reference antenna to the power supplied to the input of the given antenna to produce, in a given direction, the same field strength or the same power flux-density at the same distance. This information should be available from the specification sheet included with the antenna at the time of purchase.

Appendix I—List of Counties, by State, having areas North of Line A

Idaho

Bonner
Boundary
Shoshone

Indiana

Allen
De Kalb
Steuben

Maine

Aroostook
Franklin
Hancock
Kennebec
Oxford
Penobscot
Piscataquis
Somerset
Waldo
Washington

Michigan

Alcona
Alger
Alpena
Antrim
Arenac
Baraga
Bay
Branch
Calhoun
Charlevoix
Cheboygan
Chippewa
Claire
Clinton
Crawford
Delta
Dickinson
Eaton
Emmett
Genesee
Gladwin
Gogebic
Gratiot
Hillsdale
Houghton
Huron
Ingham
Ionia
Iosco
Iron
Isabella
Jackson
Kalkaska
Keweenaw
Lapeer
Leelanau
Lenawee
Livingston
Luce
Mackinac
Macomb
Marquette
Menominee
Midland
Missaukee
Monroe
Montcalm
Montmorency
Oakland
Ogemaw
Ontonagon
Oscoda
Otsego
Presque Isle
Roscommon
Saginaw
Sanilac
Schoolcraft
Shiawassee
St. Clair
Tuscola
Washtenaw
Wayne

Minnesota

Beltrami
Carlton
Clearwater
Cook
Itasca
Koochiching
Lake
Lake of the Woods
Marshall
Pennington
Polk
Roseau
St. Louis

Montana

Blaine
Chouteau
Daniels
Flathead
Glacier
Hill
Lake
Liberty
Lincoln
McCone
Phillips
Pondera
Richland
Roosevelt
Sanders
Sheridan
Teton
Toole
Valley

New Hampshire

Carroll
Coos
Grafton

New York

Alleghany
Cattaraugus
Cayuga
Chautaugua
Clinton
Erie
Essex
Franklin
Genesee
Hamilton
Herkimer

Jefferson
Lewis
Livingston
Madison
Monroe
Niagara
Oneida
Onondaga
Ontario
Orleans
Oswego
Seneca
Steuben
St. Lawrence
Warren
Washington
Wayne
Wyoming
Yates

North Dakota

Benson
Bottineau
Burke
Cavalier
Divide
Grand Forks
McHenry
McKenzie
Mountrail
Nelson
Pembina
Pierce
Ramsey
Renville
Rolette
Towner
Walsh
Ward
Williams

Ohio

Ashland
Ashtabula
Cuyahoga
Defiance
Erie
Fulton
Geauga
Hancock
Henry
Huron
Lake
Lorain
Lucas
Medina
Ottawa
Paulding
Portage
Putnam
Sandusky
Seneca
Summit
Trumbull
Williams
Woods

Pennsylvania

Crawford
Erie
Warren

Vermont

Addison
Caledonia
Chittenden
Essex
Franklin
Grand Isle
Lamoille
Orange
Orleans
Rutland
Washington
Windsor

Washington

Chelan
Clallam
Douglas
Ferry
Grays Harbor
Island
Jefferson
King
Kitsap
Mason
Okanogan
Pend Oreille
Pierce
San Juan
Skagit
Snohomish
Spokane
Stevens
Whatcom

Wisconsin

Ashland
Bayfield
Douglas
Florence
Forest
Iron
Vilas

Appendix II—Commission Field Offices

The Commission's field offices and the zip codes are listed below. Correspondence with the field offices should be addressed to: Federal Communications Commission, Engineer-in-Charge. The street address of any office may be found in the local directory, for the city in which the office is located, under the heading United States Government.

Alaska

Anchorage 99502–1896

Arizona

Douglas 85608–0006

California

San Diego 92111–2216
Livermore 94551–0311
Cerritos 90701–3684
Hayward 94545–1914

Colorado

Lakewood 80228–2213

Florida

Vero Beach 32961–1730
Miami 33166–4668
Tampa 33607–2356

Georgia

Duluth 30136–4958
Powder Springs 30073–0085

Hawaii

Waipahu 96797–1030

Illinois

Park Ridge 60068–1460

Louisiana

New Orleans 70123–3333

Maine

Belfast 04915–0470

Maryland

Baltimore 21201–2802
Columbia 21045–9998

Massachusetts

Quincy 02169–7495

Michigan

Allegan 49010–9437
Farmington Hills 48335–1552

Minnesota

St. Paul 55101–1467

Missouri

Kansas City 64133–4895

Nebraska

Grand Island 68802–1588

New York

Buffalo 14202–2398
New York 10014–4870

Oregon

Portland 97204–2898

Pennsylvania

Langhorne 19047–1859

Puerto Rico

Hato Rey 00918–1731

Texas

Dallas 75243–3429
Houston 77008–1775
Kingsville 78363–0632

Virginia

Virginia Beach 23455–3725

Washington

Custer 98240–9303
Kirkland 98034–6927

BILLING CODE 6712-01-M

FCC 600
Main Form

FEDERAL COMMUNICATIONS COMMISSION

Approved by OMB
3060-0600
Expires dd/mm/yy
Est. Avg. Burden Hours
Per Response: 60 Hrs.

FCC Use Only
(File Number)

FEE Use Only

Application for Mobile Radio Service Authorization
or Rural Radiotelephone Service Authorization

FILING FEE

(a) Fee Type Code	(b) Fee Multiple	(c) Fee Due for Fee Type Code in (a)	(d) Total Amount Due	FEE Use Only
			$	

APPLICANT

1. Legal Name of Applicant	2. Voice Telephone Number ( )	
3. Assumed Name Used for Doing Business (if any)	4. Fax Telephone Number ( )	
5. Mailing Street Address or P.O. Box ATTENTION:		
6. City	7. State	8. Zip Code

9. Name of Contact Representative (if other than applicant)	10. Voice Telephone Number ( )	
11. Firm or Company Name	12. Fax Telephone Number ( )	
13. Mailing Street Address or P.O. Box		
14. City	15. State	16. Zip Code

CLASSIFICATION OF FILING

17. This filing is a (an) [ ] New application Amendment to a pending application

18. Does the applicant believe that this filing should be classified as MINOR under 47 U.S.C. § 309? [ ] Yes No Does not apply

19. If not minor under 47 U.S.C. § 309, classification for purposes of competitive bidding: [ ] Initial Modification Renewal

20. If this filing is in reference to an existing station: **Call sign of existing station:**	21. If this filing is an amendment to a pending application: **File number of pending application:** **Date Filed:**

NATURE OF SERVICE

22. This filing is for authorization to provide or use the following type(s) of radio service:
[ ] Commercial mobile Private mobile Both commercial and private mobile Fixed

23. Users are or will be: [ ] Public subscribers Eligibles Internal		24. Status: [ ] Profit Not for profit
25. Interconnected service? [ ] Yes No	26. Radio Service code: [ ]	27. Type of operation code: [ ]

ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental effect as defined by 47 CFR 1.1307? * If "yes", attach environmental assessment as required by 47 CFR 1.1308 and 47 CFR 1.1311.	[ ] Yes	No

ALIEN OWNERSHIP

29. Is the applicant a foreign government or the representative of any foreign government?	[ ] Yes	No
30. Is the applicant an alien or the representative of an alien?	[ ] Yes	No
31. Is the applicant a corporation organized under the laws of any foreign government?	[ ] Yes	No
32. Is the applicant a corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	[ ] Yes	No
33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? * If "yes", attach exhibit explaining nature and extent of alien or foreign ownership or control.	[ ] Yes	No

BASIC QUALIFICATIONS

34. Has the applicant or any party to this application or amendment had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission? * If "yes", attach exhibit explaining circumstances.	[ ] Yes	No
35. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court?	[ ] Yes	No
36. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition?	[ ] Yes	No
37. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items?	[ ] Yes	No
38. Does the undersigned certify (by responding "Y" to this question), that neither the applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, because of a conviction for possession or distribution of a controlled substance? * See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.	[ ] Yes	No

CERTIFICATION

The APPLICANT waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

39. Applicant is a (an) [ ] Individual Unincorporated Association Partnership Corporation Governmental Entity

40. Typed Name of Person Signing	41. Title
42. Signature	43. Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S.Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

FCC 600 Schedule A	FEDERAL COMMUNICATIONS COMMISSION **Administrative Information** Personal Communications Service Cellular Radiotelephone Service Paging and Radiotelephone Service Rural Radiotelephone Service Offshore Radiotelephone Service Air-ground Radiotelephone Service	Approved by OMB 0000 0000 Expires dd/mm/yy Est. Avg. Burden Hours Per Response: 69 Hrs. FCC Use Only

PURPOSE OF FILING

A1. The purpose of this filing is to:

[ ]

Enter one or more letters that correctly describe the purpose of this filing.

MAJOR

- A request an initial authorization for a new system or station; additional channels or spectrum (all)
- B request authorization or amend a pending application to change a channel or channel block (all)
- C request a partial assignment of a radio station authorization (all)
- D request authorization for facilities for which environmental assessment is required (all)
- E request authorization for facilities for which international coordination is required (all)
- F request a developmental authorization (CD, CL, CR)
- G request regular authorization for facilities operating under developmental authority (CD, CL, CR)
- H amend a pending application to substantially change the technical proposal (CD, CR)
- I request authorization for a cellular facility that would produce a de minimis SAB extension (CL)
- J amend a pending application to modify a CGSA to include area not previously proposed (CL)
- K request that a CGSA boundary be determined using an alternative method (CL)
- L request authorization for a new or expanded service area on a requested channel (CD)
- M request authorization for one or more new or relocated fixed stations (CD)
- N request authorization to increase the ERP and/or antenna height AAT of a fixed station (CD)
- O request authority to provide commercial paging service using a broadcast station subcarrier (CD)
- P request authorization for a Commercial Aviation ground station location to be established (CG)
- Q request authorization for a new or relocated General Aviation ground station (CG)
- R request authorization for a new/relocated rural/offshore central office/interoffice station (CR, CO)

MINOR

- S request authorization for one or more minor change(s) to an existing system or station (all)
- T effect a minor amendment of a pending application (all)
- U request an extension of time to complete construction of one or more facilities (all)
- V request authorization for a new or relocated rural or offshore subscriber station (CR, CO)
- W request to consolidate separately authorized facilities (all)

MARKET / CHANNEL BLOCK

A2. Market Designator	A3. Channel Block	A4. Sub-Market Designator	A5. Market Name

CONTROL POINTS

A6. Control Point Number	A7 Location Street Address, City or Town, State	A8. Telephone Number	A9. Action Requested Add Delete
		( )	
		( )	
		( )	

FACILITIES NOT CONSTRUCTED

A10. Location Number	A11. File Number	A12. Location Street Address, City or Town, State

FCC 600 Schedule B	FEDERAL COMMUNICATIONS COMMISSION **Technical Data** (Individual Channel Assignment) Personal Communications Service (Narrowband) Paging and Radiotelephone Service Rural Radiotelephone Service Air-ground Radiotelephone Service (General Aviation) Offshore Radiotelephone Service	Approved by OMB 0000-0000 Expires dd/mm/yy Est. Avg. Burden Hours Per Response: 99 Hrs. FCC Use Only

LOCATION

B1. Action Requested [ ] Add Delete Modify	B2. FCC Location Number (Key to Schedule F)	
B3. Street Address or other Description of Location		
B4. City		
B5. County		B6. State
B7. NAD 27 North Latitude (DD-MM-SS) ____ ° ____ ' ____ "	B8. NAD 27 West Longitude (DDD-MM-SS) ____ ° ____ ' ____ "	FCC Use Only
B9. NAD 83 North Latitude (DD-MM-SS) ____ ° ____ ' ____ "	B10. NAD 83 West Longitude (DDD-MM-SS) ____ ° ____ ' ____ "	

If changing antenna location, provide coordinates, FCC location number and datum for old location:

B11. North Latitude (DD-MM-SS) ____ ° ____ ' ____ "	B12. West Longitude (DDD-MM-SS) ____ ° ____ ' ____ "	B13. FCC Location Number B14. Datum (NAD 27 or NAD 83)

SUPPLEMENTARY LOCATION INFORMATION

B15. Is this location North of Line A or East of Line C? [ ] Yes, North of Line A Yes, East of Line C No
B16. Is this location within 200 kilometers of the U.S.-Mexico border? [ ] Yes No

Complete the following for any adjacent markets within 200 kilometers of this location:

B17. Adjacent Market Designator	B18. Adjacent Market Name	B19. Shortest Distance to Adjacent Market (kilometers)

ANTENNA

B20. Action Requested [ ] Add Delete Modify	B21. Status: [ ] Existing Proposed	B22. Antenna Number
B23. Type	B24. Manufacturer	B25. Model Number
B26. Height of Center of Radiation AAT (meters)	B27. Beamwidth of Main Lobe (degrees)	B28. Height to Tip AGL (meters)

TRANSMITTERS FOR ANTENNA

B29. Transmitter Number	B30. Action Requested Add Delete Modify	B31. Channel Center Frequency (MHz)	B32. Transmitter Class Code	B33. Non-standard Emission Type Designator	B34. Maximum Transmitting ERP
I					
II					
III					
IV					

RADIAL DATA FOR ANTENNA

Azimuth (degrees from true North)	B35. Antenna Height AAT (meters)	B36. Transmitter I ERP (Watts)	B37. Transmitter II ERP (Watts)	B38. Transmitter III ERP (Watts)	B39. Transmitter IV ERP (Watts)
0°					
45°					
90°					
135°					
180°					
225°					
270°					
315°					

POINTS OF COMMUNICATION FOR ANTENNA

B40. Action Requested Add Delete	B41 Transmitter Number	B42. Location (City or Town, State)	B43. North Latitude (DD°MM'SS")	B44. West Longitude (DDD°MM'SS")	B45. Subscriber Call Sign

FCC 600 Schedule C	FEDERAL COMMUNICATIONS COMMISSION **Technical Data** (Block Channel Assignment) Cellular Radiotelephone Service Personal Communications Service (Broadband) Air-ground Radiotelephone Service (Commercial Aviation)	Approved by OMB 0000 0000 Expires dd/mm/yy Est. Avg. Burden Hours Per Response: 00 Hrs. FCC Use Only

LOCATION

C1. Action Requested [ ] Add Delete Modify	C2. FCC Location Number (Key to Schedule F)	
C3. Street Address or other Description of Location		
C4. City		
C5. County		C6. State
C7. NAD 27 North Latitude (DD-MM-SS) _____ ° _____ ' _____ "	C8. NAD 27 West Longitude (DDD-MM-SS) _____ ° _____ ' _____ "	FCC Use Only
C9. NAD 83 North Latitude (DD-MM-SS) _____ ° _____ ' _____ "	C10. NAD 83 West Longitude (DDD-MM-SS) _____ ° _____ ' _____ "	

If changing antenna location, provide coordinates, FCC location number and datum for old location:

C11. North Latitude (DD-MM-SS) _____ ° _____ ' _____ "	C12. West Longitude (DDD-MM-SS) _____ ° _____ ' _____ "	C13. FCC Location Number
		C14. Datum (NAD 27 or NAD 83)

TECHNICAL PARAMETERS

C15. Height of Antenna Center of Radiation AAT (meters)	C16. Height to Top of Antenna AGL (meters)	C17. Maximum ERP (Watts)

RADIAL DATA

Azimuth (degrees from true North)	C18. Antenna Height AAT (meters)	C19. Transmitting ERP (Watts)	C20. Distance to SAB (kilometers)	C21. Distance to CGSA (kilometers)
0°				
45°				
90°				
135°				
180°				
225°				
270°				
315°				

FCC 600

FEDERAL COMMUNICATIONS COMMISSION

SCHEDULE D

Administrative Data

(all services except those for which Schedule A is required)

Approved by OMB
0000-0000
Expires dd/mm/yy
Est. Avg. Burden Hours Per Response: 00 Hrs.

FCC Use Only

Licensee Name	Radio Service	Call Sign or Station Location (City, State)

PURPOSE OF FILING

D1. The purpose of this filing is to:

- [ ] N request a new station license.
- [ ] M modify an existing licensed station(s).
- [ ] R renew an existing licensed station.
- [ ] X reinstate an expired call sign.
- [ ] A assign an existing license.

D2. If system licensing, list call signs of stations to be combined. (First call sign will be retained.)

D3. Specify proposed modifications, if any:

ASSOCIATED CALL SIGNS

D4. Call signs:

RADIO SYSTEM OPERATION POINT OF CONTACT

D5. Street Address, City, State	D6. Voice Telephone Number ( )

ASSOCIATED BROADCAST STATION

D7. Call Sign	D8. City	D9. State

MARKET AREA

D10. Market Area / Number

PAGING OPERATIONS

D11. Number of Paging Receivers

ELIGIBILITY

D12. Describe Activity	D13. Rule Section

FOR FREQUENCY COORDINATOR'S USE ONLY

D14. Frequency Coordination Number [ ]

FCC 600 - Schedule D
October 1994

FCC 600	FEDERAL COMMUNICATIONS COMMISSION SCHEDULE E **Station Location Data** (all services except those for which Schedule A is required)	Approved by OMB 0000-0000 Expires dd/mm/yy Est. Avg. Burden Hours Per Response: 00 Hrs. FCC Use Only

Licensee Name	Radio Service	Call Sign or Station Location (City, State)

E1. Specify the datum used to determine all coordinates on this filing: [ ] NAD27 NAD83 Other (Specify _____)

FIXED OR PERMANENT LOCATIONS

LOC	E2. Station Address / Geographic Location	E3. City	E4. County	E5. State
A				
B				
C				
D				
E				
F				

LOC	E6. Latitude (degrees, minutes, seconds)	E7. Longitude (degrees, minutes, seconds)	E8. Ground Elevation (meters)
A			
B			
C			
D			
E			
F			

CONTROLS MEETING THE 20 FOOT CRITERIA, MOBILE OR TEMPORARY LOCATIONS

LOC	E9. Radius (km)	E10. Area of Operation Code	E11. LATITUDE	LONGITUDE	COUNTY	STATE	E12. Operations (S) South of Line A and/or (W) West of Line C
G			- -	- -			
			- -	- -			
			- -	- -			
			- -	- -			
			- -	- -			
			- -	- -			

FCC 600 - Schedule E
October 1994

State Table

Abbreviations for States, Jurisdictions and Areas

AL Alabama
AK Alaska
AZ Arizona
AR Arkansas
CA California
CO Colorado
CT Connecticut
DE Delaware
DC District of Columbia
FL Florida
GA Georgia
GM Gulf of Mexico
HI Hawaii
ID Idaho
IL Illinois
IN Indiana
IA Iowa
KS Kansas
KY Kentucky
LA Louisiana
ME Maine
MD Maryland
MA Massachusetts
MI Michigan
MN Minnesota
MS Mississippi
MO Missouri
MT Montana
NE Nebraska
NV Nevada
NH New Hampshire
NJ New Jersey
NM New Mexico
NY New York
NC North Carolina
ND North Dakota
OH Ohio
OK Oklahoma
OR Oregon
PA Pennsylvania
RI Rhode Island
SC South Carolina
SD South Dakota
TN Tennessee
TX Texas
UT Utah
VT Vermont
VA Virginia
WA Washington
WV West Virginia
WI Wisconsin
WY Wyoming
AS American Samoa
GU Guam
UM Midway Island
MP Northern Mariana Islands
PR Puerto Rico
VI Virgin Islands
UM Wake Island

BILLING CODE 6712-01-M

FCC 600

FEDERAL COMMUNICATIONS COMMISSION

SCHEDULE F

Antenna Structure Data

(All Services)

Approved by OMB
0060-0000
Expires dd/mm/yy
Est. Avg. Burden Hours Per Response: 00 Hrs.

FCC Use Only

Licensee Name	Radio Service	Call Sign or Station Location (City, State)

STATUS AND IDENTIFYING INFORMATION

LOC	F1. Location Number	F2. New or Existing	F3. Call Sign of Existing Station	F4. Radio Service	F5. Tower Owner's Name and Telephone Number
A					( )
B					( )
C					( )
D					( )
E					( )
F					( )

STRUCTURE TYPE AND HEIGHT

LOC	F6. Figure Number (see reverse)	F7. Structure Type	F8. Height of Support Structure (b) (meters)	F9. Overall Height of Structure (d) (meters)	F10. FCC Tower Number
A					
B					
C					
D					
E					
F					

FAA NOTIFICATION

LOC	F11. FAA notified? Yes No	F12. Date FAA Notification Filed	F13. FAA Regional Office Notified	F14. FAA Study Number
A				
B				
C				
D				
E				
F				

Figure 1

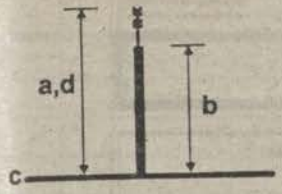


Figure 2

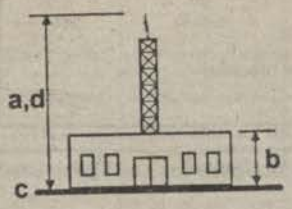
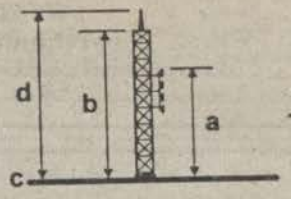


Figure 3



a = height to tip of antenna (AGL)

b = height of support structure (AGL)

c = ground elevation (AMSL)

d = overall height of structure including all appurtenances (AGL)

FCC 600	FEDERAL COMMUNICATIONS COMMISSION SCHEDULE G **Technical Data** (all services except those for which Schedule A is required)	Approved by OMB 9999 9999 Expires dd/mm/yy Est. Avg. Burden Hours Per Response: 99 Hrs. FCC Use Only

Licensee Name	Radio Service	Call Sign or Station Location (City, State)

LOC	G1. Frequency (MHz)	G2. Station Class	G3. No. Units	G4. Emission	G5. Output	G6. ERP	G7. AAT (meters)	G8. Ant. Ht. (meters)
A								

FCC 600 - Schedule G
October 1994

LOC	G1. Frequency (MHz)	G2. Station Class	G3. No. Units	G4. Emission	G5. Output	G6. ERP	G7. AAT (meters)	G8. Ant. Ht. (meters)

FCC 600 - Schedule G
October 1994

FCC 600

FEDERAL COMMUNICATIONS COMMISSION

SCHEDULE H

Additional Antenna Data

(Remote Pickup Broadcast Auxiliary)
(Land Mobile Stations Operating on Frequencies Under 27.5 MHz)
(Land Mobile Stations Located Near International Borders that Seek Protection from Interference)

Approved by OMB
0000 0000
Expires dd/mm/yy
Est. Avg. Burden Hours
Per Response: 00 Hrs.

FCC Use Only

Licensee Name	Radio Service	Call Sign or Station Location (City, State)

LOC	H1. Frequency (MHz)	H2. Azimuth	H3. Beamwidth (degrees)	H4. Polarization	H5. Gain (dB)

LOC	H1. Frequency (MHz)	H2. Azimuth	H3. Beamwidth (degrees)	H4. Polarization	H5. Gain (dB)

FCC 600 - Schedule H
October 1994

[FR Doc. 94-26948 Filed 10-31-94; 8:45 am]

BILLING CODE 6712-01-C

[GEN Docket No. 90-287; DA 94-1166]

Private Land Mobile Radio Services; Northern California Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Acting Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for Northern California (Region 6). As a result of accepting the amendment for the Plan for Region 6, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: October 25, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: October 17, 1994.
Released: October 25, 1994.
By the Acting Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Northern California (Region 6) Public Safety Plan (Plan) on November 20, 1990, 5 FCC Rcd 7123 (1990).

2. By letter dated May 9, 1994, the Region proposed to amend its Plan. The proposed amendment would, in part, revise the current channel allotments. The Commission placed the letter on Public Notice for comments due on September 15, 1994, 59 FR 42046 (August 16, 1994). The Commission received two comments, both of which urged the Commission to approve the proposed amendment.

3. We have reviewed the proposed amendment to the Region 6 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the Region.

4. Accordingly, IT IS ORDERED, That the Public Safety Radio Plan for Northern California (Region 6) IS AMENDED, as set forth in the Region's letter of May 9, 1994. This Amendment is effective immediately.

Federal Communications Commission.

Rosalind K. Allen,

Acting Chief, Land Mobile and Microwave Division.

[FR Doc. 94-26957 Filed 10-31-94; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL RESERVE SYSTEM

NSB Holding Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 25, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. NSB Holding Corp., Staten Island, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Northfield Savings Bank, Staten Island, New York.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Century South Banks, Inc., Dahlonega, Georgia; to acquire 99.21 percent of the voting shares of First Community Bank of Dawsonville, Dawsonville, Georgia.

2. Century South Banks, Inc., Dahlonega, Georgia; to merge with Gwinnett Bancorp, Inc., Duluth, Georgia, and thereby indirectly acquire Gwinnett National Bank, Duluth, Georgia.

3. S&V Holding Company, Maryville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Etowah Bancing Company, Etowah, Tennessee, and thereby indirectly acquire Southern United Bank of McMinn County, Etowah, Tennessee.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Altus NBC Corporation, Altus, Oklahoma; to acquire 100 percent of the voting shares of Capital National Bancshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Capital National Bank, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, October 26, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-26986 Filed 10-31-94; 8:45 am]

BILLING CODE 6210-01-F

Louis F. Pignatelli; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 15, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Louis F. Pignatelli, Rock Falls, Illinois, to acquire 7.5 percent of the voting shares of Community Illinois Corporation, Rock Falls, Illinois, and thereby indirectly acquire Community State Bank of Rock Falls, Rock Falls, Illinois.

Board of Governors of the Federal Reserve System, October 26, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-26987 Filed 10-31-94; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; Norwest Financial Special Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to engage *de novo* in consumer finance and sales finance, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and the offering for sale and selling of bookkeeping, payroll and other management financial reporting services and data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 26, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-26990 Filed 10–31–94; 8:45 am]

BILLING CODE 6210–01–F

Christopher Thomas Moser; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-94-26260) published on page 53477 of the issue for Monday, October 24, 1994.

Under the Federal Reserve Bank of Dallas heading, the entry for Christopher Thomas Moser, is revised to read as follows:

1. Christopher Thomas Moser, San Antonio, Texas; to acquire 4.61 percent, for a total of 10.29 percent; William B. Moser, Jr., Beeville, Texas, to retain a total of 6.64 percent; Margaret Lyne Moser, Beeville, Texas, to retain a total of 4.04 percent; William Barnett Moser, III, Live Oak County, Texas, to retain a total of 1.65 percent; Katheryn Olivia Moser Trust, San Antonio, Texas to retain a total of .35 percent; Sybil Small West Grantor Trust, San Antonio, Texas, to retain a total of .35 percent; Edward Zacharias Lyne Moser, San Antonio, Texas, to acquire .17 percent, for a total of 2.92 percent; and Ruth Moser Davies, Austin, Texas, to retain a total of 1.64 percent of the voting shares of Southwest First Community, Inc., and thereby indirectly acquire State Bank & Trust Company, Beeville, Texas, and Commercial State Bank, Sinton, Texas.

Comments on this application must be received by November 14, 1994.

Board of Governors of the Federal Reserve System, October 26, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-26989 Filed 10–31–94; 8:45 am]

BILLING CODE 6210–01–F

Bank South Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Bank South Corporation, Atlanta, Georgia, to acquire Gwinnett Bancshares, Inc., Lawrenceville, Georgia, and thereby indirectly acquire Gwinnett Federal Bank, FSB, Lawrenceville, Georgia, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 26, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-26988 Filed 10–31–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 911 0097]

Baby Furniture Plus Association, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Alabama buying cooperative and trade association from taking any action on behalf of its members, or encouraging them to take any action, that interferes with a juvenile product manufacturer's decision as to how or to whom to distribute its products. The consent agreement also would prohibit the respondent from coercing—by means of actual or threatened refusals to deal—any juvenile products manufacturer to abandon or adopt—or to refrain from abandoning or adopting—any marketing method for its products.

DATES: Comments must be received on or before January 3, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20850.

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 101 Merrimac St., Suite 810, Boston, MA 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 State. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.35), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Baby Furniture Plus Association, Inc. ("BFPAI") and it now appearing that the BFPAI, hereinafter referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between the BFPAI, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Baby Furniture Plus Association, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at Suite 1, 1020 Montgomery Highway, Birmingham, Alabama 35216. Respondent is a voluntary association of retailers of juvenile products doing business in approximately twenty-five States.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

A. "Baby Furniture Plus Association, Inc." means Baby Furniture Plus Association, Inc., and its directors, committees, officers, representatives, agents, employees, successors and assigns.

B. "Juvenile products" means products or accessories to products that are used by or are intended for use by babies, children or juveniles.

I

It is ordered that BFPAI, directly, indirectly, or through any corporate or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, as amended, forthwith cease and desist from:

A. Taking any action, directly or indirectly, on behalf of its members, including but not limited to any actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s);

B. Coercing, compelling, inducing, or intimidating by means of actual or threatened refusals to deal, or attempting to coerce, compel, induce, or

intimidate by means of actual or threatened refusals to deal, any manufacturer of juvenile products into abandoning, adopting or refraining from abandoning or adopting any marketing method, practice or policy with regard to the distribution of its product(s); and

C. Requesting, urging, recommending or suggesting that BFPAI members take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s).

Provided that this order shall not be construed to prevent BFPAI from engaging in trade association or buying cooperative activities that are lawful under the antitrust laws.

II

It is further ordered that BFPAI shall:

A. Distribute by first-class mail a copy of this order and the accompanying complaint to each of BFPAI's members within thirty (30) days after the date on which this order become final;

B. For a period of five (5) years after the date on which this order becomes final, provide each new BFPAI member with a copy of this order and the accompanying complaint at the time the member is accepted for membership; and

C. Within thirty (30) days after the date on which this order becomes final, distribute by first-class mail to each manufacturer enumerated in "Appendix A" to this order a copy of the Commission's complaint and order in this matter and letter, on BFPAI letterhead and signed by BFPAI's president, in the form shown as "Appendix B" to this order.

III

It is further ordered that, for a period of five (5) years after this order becomes final, BFPAI shall maintain in its files a copy of the minutes of each meeting of its membership and of each meeting of its board of directors and a copy of all correspondence received from, or sent to, any mail order dealer of juvenile products, any manufacturer of juvenile products, or any association representing manufacturers of juvenile products and that such copies of minutes and correspondence be made available to Commission staff for inspection and copying upon reasonable notice.

IV

It is further ordered that, within sixty (60) days after the date on which this order becomes final, BFPAI shall file with the Commission a verified written report setting forth in detail the manner and form in which it has complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission or its staff may, by written notice to BFPAI, require.

V

It is further ordered that BFPAI shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

Appendix A

A.D.I. Lamps, P.O. Box 6357, Phoenix, AZ 85005, Attn: National Sales Manager
Aprica U.S.A., Inc. P.O. Box 25408—Zip 92825–5408, 1200 Howell Avenue, Anaheim, CA 92805, Attn: National Sales Manager
Baby Trend, Inc., 1928 W. Holt Avenue, Pomona, CA 91768, Attn: National Sales Manager
Bandaks Emmaljunga Incorporated, 737 South Vinewood Street, Escondido, CA 92029, Attn: National Sales Manager
Bassett Furniture Industries, Inc., P.O. Box 626, Bassett, VA 24055, Attn: National Sales Manager
Carlson Children's Products, Inc., 122 Kirkland Circle, Oswego, IL 60543, Attn: National Sales Manager
Century Products Company, 9600 Valley View Road, Macedonia, OH 44056–9989, Attn: National Sales Manager
Chicco Artsana of America, 200 Fifth Ave., Rm 910, New York, NY 10010, Attn: National Sales Manager
Child Craft Industries, Inc., P.O. Box 444, Salem, IN 47167–0444, Attn: National Sales Manager
Children on the Go, 1670 S. Wolf Road, Wheeling, IL 60090, Attn: National Sales Manager
Cocso, Inc., 2525 State St., Columbus, IN 47201, Attn: National Sales Manager
Dutalier, Inc., 298 Chaput St. Pie, Quebec, Canada JOH 1WO, Attn: National Sales Manager
Evenflo Juvenile Furniture Co., 1801 Commerce Drive, Piqua, OH 45356, Attn: National Sales Manager
FBS, Inc., 1071 Batesville, Rd., Greer, SC 29650, Attn: National Sales Manager
Fisher-Price, Inc., 636 Girard Ave., East Aurora, NY 14052, Attn: National Sales Manager
Gerry Baby Products, 12530 Grant Drive, Denver, CO 80233, Attn: National Sales Manager
Glenna Jean Mfg., P.O. Box 2187, Petersburg, VA 23804, Attn: National Sales Manager
Graco Children's Products, Inc., Rt 23, Main St., Elverson, PA 19520, Attn: National Sales Manager
Jolly Jumper, P.O. Box M, Woonsocket, RI 22895, Attn: National Sales Manager
Lambs & Ivy, 5978 Bowcroft St., Los Angeles, CA 90016, Attn: National Sales Manager
The Little Tikes Co., 2180 Barlow Rd., Hudson, OH 44236, Attn: National Sales Manager
Newborne Company, River Rd., Worthington, MA 01098, Attn: National Sales Manager
Noel Joanna Inc., 22942 Arroyo Vista, Rancho Santa Margarita, CA 92688, Attn: National Sales Manager
Nu-Line, 214 Nu-Line St., Suring, WI 54174, Attn: National Sales Manager
Omron Marshall Products, 600 Barclay Blvd., Lincolnshire, IL 60069, Attn: National Sales Manager
Pansy Ellen Products, 1245 Old Alpharetta Rd., Alpharetta, GA 30202, Attn: National Sales Manager
Perego, USA, 3625 Indpendence Drive, Fort Wayne, IN 46808, Attn: National Sales Manager
Prince Lionheart, 3070 Skyway Dr., Bldg. 502, Santa Maria, CA 93455, Attn: National Sales Manager
The Red Calliope & Associates, Inc., 13003 S. Figueroa St., Los Angeles, CA 90061, Attn: National Sales Manager
Rochelle Furniture, 722 North Market St., Duncannon, PA 17020, Attn: National Sales Manager
Safety 1st, Inc., 210 Boylston St., Chestnut Hill, MA 02167, Attn: National Sales Manager
Sandbox Industries, P.O. Box 477, Tenafly, NJ 07670, Attn: National Sales Manager
Sassy, Inc., 1534 College SE, Grand Rapids, MI 49507, Attn: National Sales Manager
Simmons Juvenile Products Co., 613 E. Beacon Avenue, New London, WI 54961, Attn: National Sales Manager
Snugli, Inc., 12520 Grant Drive, Denver, CO 80233, Attn: National Sales Manager
Summer Infant Products, 33 Meeting Street, Cumberland, RI 02864, Attn: National Sales Manager
Welsh Company, 1535 S. Eighth St., St. Louis, MO 63104, Attn: National Sales Manager

Appendix B

Dear _____

As you may be aware, the Federal Trade Commission ("FTC") has been investigating certain activities of the Baby Furniture Plus Association, Inc. ("BFPAI"). The BFPAI has voluntarily entered into an agreement with the FTC which resulted in the issuance by the FTC on (date) of a complaint and the entry of a consent order. The order requires that you be sent a copy of the complaint, the order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that, among other things, the BFPAI will cease and desist from:

A. Taking any action, directly or indirectly, on behalf of its members, including but not limited to any actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its products(s);

B. Coercing, compelling, inducing, or intimidating by means of actual or threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of

actual or threatened refusals to deal, any manufacturer of juvenile products into abandoning, adopting or refraining from abandoning or adopting any marketing method, practice or policy with regard to the distribution of its product(s); and

C. Requesting, urging, recommending or suggesting that BFPAI members take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s).

A copy of the complaint and the order are enclosed.

Sincerely,

President

Enclosures

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from proposed respondent Baby Furniture Plus Association, Inc. ("proposed respondent" or "BFPAI").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

Description of Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that proposed respondent's members, all of whom are retailers of juvenile products, agreed to act in concert to restrict the competition that some of the members faced from the New Hampshire Buyer's Service catalog.

The complaint alleges that pursuant to this agreement, the BFPAI wrote letters to thirty-seven manufacturers of juvenile products in which it directly or impliedly threatened that its members would refuse to deal with them if the manufacturers continued to do business with the New Hampshire Buyer's Service catalog.

The complaint alleges that these actions constituted a combination or conspiracy to threaten to boycott juvenile product manufacturers that do business with the New Hampshire Buyer's Service catalog. This conduct, it is alleged, had the purpose or effect, or the tendency or capacity, to restrain competition unreasonably and injure consumers. Among other things, it is alleged that the conduct restrained competition between the proposed respondent's members and other retailers of juvenile products, including the New Hampshire Buyer's Service catalog, restrained the ability of manufacturers of juvenile products to distribute their products through mail order catalogs, and deprived consumers of the benefits of additional price, quality and service competition in connection with the sale of juvenile products.

Description of the Proposed Consent Order

The proposed order would require the proposed respondent to cease and desist from taking any action on behalf of its members, including an actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with a juvenile product manufacturer's decision as to how or to whom it distributes its products. In addition, the proposed order requires the BFPAI to cease and desist from actual or threatened boycotts, refusals to deal or the use of other means of coercion to compel or induce any juvenile product manufacturer to adopt or refrain from adopting any marketing method, practice or policy with regard to the distribution of its products. Finally, the proposed order requires the proposed respondent to cease and desist from requesting, urging, recommending or suggesting that its members take action, such as an actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with a juvenile product manufacturer's decision as to how or to whom it distributes its products.

The proposed order contains a safe harbor provision which provides that the order shall not be construed to prevent the BFPAI from engaging in trade association or buying cooperative activities that are lawful under the antitrust laws.

The BFPAI is required to take several remedial actions under the terms of the proposed order. Within 30 days after the order becomes final, the BFPAI must distribute a copy of the order to all its members and, for a five year period, the BFPAI must make a copy of the order available to all new members at the time they are accepted for membership. In addition, within 30 days after this order becomes final, the BFPAI must also send a letter to the manufacturers it had threatened to boycott in which it acknowledges the consent order and outlines the order's principal terms.

Finally, the proposed order requires the BFPAI to file compliance reports, to retain certain documents for a five year period, and to notify the Commission of certain changes in status.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga in *New England Juvenile Retailers Association*, File 911-0079, and *Baby Furniture Plus Association, Inc.*, File 911-0097

In these cases, two trade associations complained to manufacturers about free riding by a catalogue seller, and the Commission charges them and the retailer members of one association with directly or impliedly threatening a concerted refusal to deal with the manufacturers. Although the letters of complaint were ill-advised, evidence that the retailers (many of whom were not represented by counsel during our investigation) were committed "to a common scheme designed to achieve an unlawful objective"[1] (*i.e.*, a coercive, concerted refusal to deal) is thin at best. Given the dearth of evidence of unlawful agreement, the arguably procompetitive purpose, and the absence both of market power and of anticompetitive effects, I do not find reason to believe that the challenged conduct unreasonably restrained trade or that the imposition of an order is in the interest of the public. I dissent.

[FR Doc. 94-27010 Filed 10-31-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 911 0079]

New England Juvenile Retailers Association, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit,

[1] Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752, 768 (1984).

among other things, a Massachusetts association of retailers from combining, agreeing or conspiring to: fix or maintain prices or the terms of sale for juvenile products; engage in or threaten boycotts in order to influence a manufacturer's decision as to how or to whom it distributes its products; or use coercion by means of actual or threatened refusals to deal in order to compel a juvenile products manufacturer to adopt or refrain from adopting any marketing method for its products. The consent agreement also would require the dissolution of the association within sixty days.

DATES: Comments must be received on or before January 3, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston, Regional Office, Federal Trade Commission, 101 Merrimac St., Suite 810, Boston, MA. 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of:

New England Juvenile Retailers Association, an association;
Elliot Young and Susan Young, individuals trading and doing business as The Baby Place, Inc.;
Baby's Room, Inc., a corporation, and
Stephen Brass, individually and as an officer of said corporation;
Baby Specialties, Inc., and Baby Specialties of Natick, Inc., corporations, and
George Koury, individually and as an officer of said corporation;
Boston Baby, Inc., Boston Baby of Avon, Inc., and Boston Baby of Hingham, Inc., corporations, and
Michael Slobodkin, individually and as an officer of said corporations;
Chapin Specialties Co., Inc., a corporation, and
Allan Broverman, individually and as an officer of said corporation;
Crib-N-Cradle Juvenile Furniture Inc., a corporation, and
Louis Avarista, Sr., individually and as an officer of said corporation;
Cribs and Cradles, Inc., a corporation, and
Robert Newhouse, individually and as an officer of said corporation;
Juveniles, Inc., and Waltham Slumber Shop, Inc., corporations, and
Timothy Precourt, individually and as an officer of said corporations;
Normand Poirier, an individual trading and doing business as Norm's Discount;
Small Wonders Limited, Inc. d/b/a Rooms To Grow, a corporation, and
Henry Ritchotte, individually and as a manager of said corporation;
Tiny Totland, Inc., a corporation, and
Jack Resnick, individually and as an officer of said corporation; and
Rudolph Mosesso, an individual.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the above-named corporations, proprietorships and individuals, hereinafter sometimes referred to as proposed respondents, and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between the proposed respondents and their duly authorized attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent New England Juvenile Retailers Association ("NEJRA") is an unincorporated association of retailers of juvenile products doing business in New England, with an office and principal place of business located in Boston, Massachusetts. The NEJRA's designated agent is Arthur Goldberg, Esq., c/o Nathanson & Goldberg, 10 Union Wharf, Boston, Massachusetts 02109.

2. Proposed respondents Elliot Young ("E. Young") and Susan Young ("S. Young") have done business as and are proprietors of The Baby Place, Inc., a retail store engaged in the sale of juvenile products. Their principal offices or places of business are 50 Worcester Road, Natick, Massachusetts 01760.

3. (a) Proposed respondent Baby's Room, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office located at 20 Garden Street, Danvers, Massachusetts 01923. Baby's Room, Inc. is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Stephen Brass ("Brass") is president of proposed respondent Baby's Room, Inc. His principal office is located at 20 Garden Street, Danvers, Massachusetts 01923.

4. (a) Proposed respondent Baby Specialties, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 100 Grove Street, Worcester, Massachusetts 01605, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Baby Specialties of Natick, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 1276 Worcester Road, Natick, Massachusetts 01760, where it is engaged in the business of the retail sale of juvenile products.

(c) Proposed respondent George Koury ("Koury") is treasurer of proposed respondents Baby Specialties, Inc. and Baby Specialties of Natick, Inc. His principal office or place of business is 100 Grove Street, Worcester, Massachusetts 01605.

5. (a) Proposed respondent Boston Baby, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 30 Tower Road, Newton, Massachusetts 02164, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Boston Baby of Avon, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place or business located at 15 Stockwell Drive, Avon, Massachusetts 02322, where it is engaged in the business of the retail sale of juvenile products.

(c) Proposed respondent Boston Baby of Hingham, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 100 Derby Street, Hingham, Massachusetts 02043, where it is engaged in the business of the retail sale of juvenile products.

(d) Proposed respondent Michael Slobodkin ("M. Slobodkin") is treasurer of proposed respondents Boston Baby, Inc., Boston Baby of Avon, Inc., and Boston Baby of Hingham, Inc. His principal office or place of business is located at 30 Tower Road, Newton, Massachusetts 02164.

6. (a) Proposed respondent Chapin Specialties Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 1140 Main Street, Springfield, Massachusetts 01103, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Allan Broverman ("Broverman") is president of proposed respondent Chapin Specialties Co., Inc. His principal office or place of business is 1140 Main Street, Springfield, Massachusetts 01103.

7. (a) Proposed respondent Crib-N-Cradle Juvenile Furniture Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 1000 Bald Hill Road, Warwick, Rhode Island 02886, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Louis Avarista, Sr. ("Avarista") is president and treasurer of Proposed respondent Crib-N-Cradle Juvenile Furniture Inc. His principal office or place of business is 1000 Bald Hill Road, Warwick, Rhode Island 02886.

8. (a) Proposed respondent Cribs And Cradles, Inc. is a corporation organized and

existing under and by virtue of the laws of the Commonwealth of Massachusetts. Cribs And Cradles, Inc. maintained an office and principal place of business located at 623 Broadway, Route 1, Saugus, Massachusetts 01906, where, until approximately January 1992, it was engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Robert Newhouse ("Newhouse") is president and treasurer of proposed respondent Cribs And Cradles, Inc. Mr. Newhouse resides at 34 Garvey Road, Framingham, Massachusetts 01701.

9. (a) Proposed respondent Juveniles, Inc. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. Juveniles, Inc. maintained an office and principal place of business located at 8 Bourbon Street, W. Peabody, Massachusetts 01960, where, until approximately May 1, 1991, it was engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Waltham Slumber Shop, Inc. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. Waltham Slumber Shop, Inc. maintained an office and principal place of business located at 879 Main Street, Waltham, Massachusetts 02154, where, until approximately May 1, 1992, it was engaged in the business of the retail sale of juvenile products.

(c) Proposed respondent Timothy Precourt ("Precourt") is president of proposed respondents Juveniles, Inc. and Waltham Slumber Shop, Inc. Mr. Precourt resides at 998 Summer Street, Lynnfield, Massachusetts 01940.

10. Proposed respondent Normand Poirier is an individual trading and doing business as Norm's Discount. Mr. Poirier maintains an office and principal place of business located at 55 Airport Road, Fitchburg, Massachusetts 01420, where he is engaged in the business of the retail sale of juvenile products.

11. (a) Proposed respondent Small Wonders Limited, Inc. d/b/a Rooms to Grow is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 117 Chestnut Street, Warwick, Rhode Island 02888, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Henry Ritchotte ("Ritchotte") is manager of the Warwick, Rhode Island store of proposed respondent Small Wonders Limited, Inc. d/b/a Rooms to Grow. His principal office or place of business is 117 Chestnut Street, Warwick, Rhode Island 02888.

12. (a) Proposed respondent Tiny Totland, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire, with its office and principal place of business located at 1111 Elm Street, Manchester, New Hampshire 03101, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Jack Resnick ("Resnick") is president of proposed respondent Tiny Totland, Inc. His principal office or place of business is 1111 Elm Street, Manchester, New Hampshire 03101.

13. Proposed respondent Rudolph Mosesso ("R. Mosesso") is an individual whose address is 132 Pine Street, Holbrook, Massachusetts 02343. Mr. Mosesso was president of Welcome Baby Boutique Inc., a corporation that was organized, existed and did business under and by virtue of the laws of the Commonwealth of Massachusetts until approximately April 27, 1993, when it was formally dissolved. While it was in operation, Welcome Baby Boutique Inc. maintained an office and principal place of business located at 1500 Main Street, S. Weymouth, Massachusetts 02190, where it was engaged in the business of the retail sale of juvenile products.

14. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

15. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

16. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

17. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

18. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Except for the proposed respondents listed below that are inactive corporations, delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent Robert Newhouse's address as stated in this agreement shall constitute service upon proposed respondent Cribs And Cradles, Inc. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent Timothy Precourt's address as stated in this agreement shall constitute service upon proposed respondents Juveniles, Inc. and Waltham Slumber Shop, Inc. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

19. Proposed respondents have read the proposed complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

A. "New England Juvenile Retailers Association" means New England Juvenile Retailers Association, and its directors, committees, officers, representatives, agents, employees, successors and assigns.

B. "Retailer respondents" means the corporate and individual respondents named in PARAGRAPHS TWO through THIRTEEN of the complaint.

C. "Juvenile products" means products or accessories to products that are used by or are intended for use by babies, children or juveniles.

I

It Is Ordered that each retailer respondent, directly or indirectly, or through any corporate or other device, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, forthwith cease and desist from entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or continuing or attempting to continue any combination, agreement or understanding, express or implied, with any other retailer respondent(s), or with any competing retailer(s) of juvenile products, to:

A. Fix, maintain, or stabilize prices, or terms or conditions of sale of juvenile products;

B. Take any action, directly or indirectly, including but not limited to

any actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s); and

C. Coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, or attempt to coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, any manufacturer of juvenile products into abandoning, adopting or refraining from abandoning or adopting any marketing method, practice or policy with regard to the distribution of its product(s).

Provide that this order shall not be construed to prohibit any individual retailer respondent from becoming or remaining a member of a bona fide trade association, buying cooperative, or joint venture, or from participating in any such organization's activities that are lawful under the antitrust laws.

II

It Is Further Ordered that the retailer respondents shall dissolve the New England Juvenile Retailers Association within sixty (60) days after the date on which this order becomes final.

III

It Is Further Ordered that respondent New England Juvenile Retailers Association shall:

A. Within thirty (30) days after the date on which this order becomes final, and prior to the dissolution provided for in PARAGRAPH II of this order, mail to each manufacturer enumerated in "Appendix A" to this order a copy of the Commission's complaint and order in this matter and a letter, on the letterhead of its attorney, Arthur Goldberg, Esq., and signed by each of the respondent retailers, in the form shown as "Appendix B" to this order; and

B. Within sixty (60) days after the date on which this order becomes final, and prior to the dissolution provided for in PARAGRAPH II of this order, file a verified written report demonstrating how it has complied with PARAGRAPH III.A. of this order.

IV

It Is Further Ordered that:

A. Each retailer respondent that is a corporation shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this order.

B. For a period of five (5) years after this order becomes final, each retailer respondent that is an individual shall notify the Commission in writing of each new affiliation with a business or employment, including self-employment, within seven (7) calendar days of such affiliation or employment. Each such notice shall include the individual retailer respondent's current business address and a statement of the nature of the business affiliation or employment which defines his/her duties and responsibilities in connection with such business affiliation or employment.

V

It Is Further Ordered that, within ninety (90) days after the date on which this order becomes final, the retailer respondents shall file with the Commission a verified written report setting forth in detail the manner and form in which they have complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission or its staff may, by written notice to the retailer respondents, require.

Appendix A

Aprica U.S.A., Inc., P.O. Box 25408—Zip 92825–5408, 1200 Howell Avenue, Anaheim, CA 92805, Attn: Douglas W. Dolansky, Executive, Vice President

Bandaks Emmaljunga Incorporated, 737 South Vinewood Street, Escondido, CA 92029, Attn: Sami Bandak, President

Bassett Furniture Industries, Inc., P.O. Box 626, Bassett, VA 24055, Attn: R. H. Spilman, President

Carlson Children's Products, Inc., 122 Kirkland Circle, Oswego, IL 60543, Attn: Mark Flannery, President

Century Products Company, 9600 Valley View Road, Macedonia, OH 44056–9989, Attn: Frank Rumpeltin, President

Child Craft Industries, Inc., P.O. Box 444, Salem, IN 47167–0444, Attn: David E. Branaman, President

COMBI International Corporation, 1401 N. Wood Dale Road, Wood Dale, IL 60191, Attn: Takashi Osato, President

Dutalier, Inc., 298 Chaput St. Pie, Quebec, CANADA J0H 1W0, Attn: Pierre Cloutier, President

Graco Children's products, Inc., Rt 23, Main Street, Elverson, PA 19520, Attn: Derial Sanders, President

Lambs & Ivy, 5978 Bowcroft Street, Los Angeles, CA 90016–4302, Attn: Barbara Laiken, President

Noel Joanna Inc., 22942 Arroyo Vista, Rancho Santa Margarita, CA 92688, Attn: Shirley A. Pepys, President

The Red Calliope & Associates, Inc., 13003 South Figueroa Street, Los Angeles, CA 90061, Attn: Neil Fohrman, President

Simmons Juvenile Products Co., 613 E. Beacon Avenue, P.O. Box 287, New London, WI 54961, Attn: John Moeller, President

Appendix B

Dear _____

As you may be aware, the Federal Trade Commission ("FTC") has been investigating certain activities of the New England Juvenile Retailers Association ("NEJRA") and its member retailers. The NEJRA has voluntarily entered into an agreement with the FTC which resulted in the issuance by the FTC on (date) of a complaint and the entry of a consent order. The order requires that you be sent a copy of the complaint, the order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that NEJRA will be dissolved. In addition, among other things, the retailers that were members of the NEJRA will cease and desist from entering into any agreement or understanding, express or implied, with any other retailer respondent(s), or with any competing retailer(s) of juvenile products, to:

A: Fix, maintain, or stabilize prices, or terms or conditions of sale of juvenile products;

B. Take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s); and

C. Coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, or attempt to coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, any manufacturer of juvenile products into abandoning, adopting or refraining from abandoning or adopting any marketing method, practice or policy with regard to the distribution of its product(s).

A copy of the complaint and the order are enclosed.

Sincerely,

Arthur Goldberg, Esq.,
Attorney for the NEJRA.

Signatures of Members
Enclosures

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from proposed respondents New England Juvenile Retailers Association ("proposed respondent" or "NEJRA"), and the following of its individual members and their owners, officers or managers: Elliot Young, Susan Young; Stephen Brass, Baby's Room Inc.; George Koury, Baby Specialties, Inc., Baby Specialties of Natick, Inc.; Michael Slobodkin, Boston Baby, Inc., Boston

Baby of Avon, Inc., Boston Baby of Hingham, Inc.; Allan Broverman, Chapin Specialties Co., Inc.; Louis Avarista, Sr., Crib-N-Cradle Juvenile Furniture Inc.; Robert J. Newhouse, Cribs and Cradles, Inc.; Timothy Precourt, Juveniles, Inc., Waltham Slumber Shop, Inc.; Normand Poirier; Henry Ritchotte, Small Wonders Limited, Inc. d/b/a Rooms to Grow; Jack Resnick, Tiny Totland,Inc.; and Rudolph Mosesso.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

Description of Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that proposed respondent's members, all of whom are retailers of juvenile products, agreed to act in concert to restrict the competition that they faced from the New Hampshire Buyer's Service catalog. The complaint alleges that in furtherance of this agreement the retailers formed the NEJRA. It is further alleged in the complaint that, on its members' behalf, the NEJRA wrote letters to thirteen manufacturers of juvenile products in which it directly or impliedly threatened that its members would refuse to deal with them if the manufacturers continued to do business with the New Hampshire Buyer's Service catalog.

The complaint alleges that these actions constituted a combination or conspiracy to threaten to boycott juvenile product manufacturers that do business with the New Hampshire Buyer's Service catalog. This conduct, it is alleged, had the purpose or effect, or the tendency or capacity, to restrain competition unreasonably and injure consumers. Among other things, it is alleged that the conduct restrained competition among members of the NEJRA and between the proposed respondent's members and other retailers of juvenile products, including the New Hampshire Buyer's Service catalog; restrained the ability of manufacturers of juvenile products to distribute their products through mail order catalogs; and deprived consumers of the benefits of additional price, quality and service competition in connection with the sale of juvenile products.

Description of the Proposed Consent Order

The proposed order prohibits the retailers from entering into any combination, agreement or understanding to fix, maintain or stabilize prices or the terms or conditions of sale of juvenile products. The proposed order also prohibits the retailers from combining, conspiring or agreeing to engage in any actual or threatened boycotts or refusals to deal in order to affect a juvenile product manufacturer's decision as to how or to whom it distributes its products. Finally, the proposed order prohibits the retailers from combining, conspiring or agreeing to use coercion or threatened refusals to deal in order to compel or induce a manufacturer of juvenile products to adopt or refrain from adopting any marketing method, practice or policy with regard to the distribution of its products.

The proposed order contains a safe harbor provision which provides that the order shall not be construed to prohibit the retailers from becoming and remaining members of a bona fide trade association, buying cooperative, or joint venture, or from participating in any such organization's lawful activities.

The proposed NEJRA order requires two remedial actions to be taken after the agreement becomes final. First, the proposed order requires the dissolution of the NEJRA within 60 days after the order becomes final. Second, the proposed order requires that, prior to dissolution, the NEJRA send a letter to the manufacturers it had threatened to boycott in which it acknowledges the consent order and outlines its principal terms.

Finally, the proposed order requires the NEJRA and the other proposed respondents to file compliance reports, and to notify the Commission of certain changes in status or employment.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondents that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA in *New England Juvenile Retailers Association*, File 911–0079, and *Baby Furniture Plus Association, Inc.*, File 911–0097

In these cases, two trade associations complained to manufacturers about free riding by a catalogue seller, and the Commission charges them and the retailer members of one association with directly or impliedly threatening a concerted refusal to deal with the manufacturers. Although the letters of complaint were ill-advised, evidence that the retailers (many of whom were not represented by counsel during our investigation) were committed "to a common scheme designed to achieve an unlawful objective"[1] (*i.e.*, a coercive, concerted refusal to deal) is thin at best. Given the dearth of evidence of unlawful agreement, the arguably procompetitive purpose, and the absence both of market power and of anticompetitive effects, I do not find reason to believe that the challenged conduct unreasonably restrained trade or that the imposition of an order is in the interest of the public. I dissent.

[FR Doc. 94–27011 Filed 10–31–94; 8:45 am]
BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday, November 9, 1994 from 9:00 A.M. to 4:00 P.M. in room 7C13 of the General Accounting Office, 441 G St., N.W., Washington, D.C.

The agenda for the meeting includes discussions of issues on (1) the Revenue Recognition project: reporting on financing sources other than revenue; (2) Entity and Display; and (3) the Stewardship project: land, heritage, and miscellaneous property and also future claims.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting. Any interested person may attend the meeting as an observer. Board

[1] Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752, 768 (1984).

discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: October 26, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–26954 Filed 10–31–94; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Epidemiologic Evaluation of Cancer and Occupational Exposures at the Rocky Flats Plant: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Epidemiologic Evaluation of Cancer and Occupational Exposures at the Rocky Flats Plant.

Time and Date: 9 a.m.–4 p.m., November 16, 1994.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to obtain guidance regarding the technical and scientific merits of the proposed Epidemiologic Evaluation of Cancer and Occupational Exposures at the Rocky Flats Plant being conducted as a cooperative agreement between the Colorado Department of Health and NIOSH. Participants will review the proposed study protocol, provide individual recommendations for scientific changes, and provide individual advice to NIOSH on the conduct of the study. Viewpoints and suggestions from industry, labor, academic, other government agencies, and the public are invited.

Contact Person for Additional Information: Richard W. Hornung, Dr. P.H. NIOSH, CDC, 4676 Columbia Parkway, Mailstop R44, Cincinnati, Ohio 45226, telephone 513/841–4400.

Dated: October 26, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–26978 Filed 10–31–94; 8:45 am]

BILLING CODE 4163–19–M

Food and Drug Administration

[Docket No. 94F–0358]

Alcide Corp., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alcide Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acidified solutions of sodium chlorite/chlorous acid in poultry processing waters. The acids used to prepare these acidified solutions could be either phosphoric acid, citric acid, hydrochloric acid, lactic acid, malic acid, or sulfuric acid.

DATES: Written comments on the petitioner's environmental assessment by December 1, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4A4433) has been filed by Alcide Corp., 8561 154th Ave., NE., Redmond, WA 98052. The petition proposes that the food additive regulations in part 173 *Secondary Direct Food Additives Permitted in Food for Human Consumption* (21 CFR part 173) be amended to provide for the safe use of acidified solutions of sodium chlorite/chlorous acid in poultry processing waters.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before December 1, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 24, 1994.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–27070 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0383]

Drug Export; Bulk Drug Substance Code 5020 (Superparamagnetic Iron Oxide)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Advanced Magnetic, Inc., has filed an application requesting conditional approval for the export of the bulk drug substance Code 5020 (superparamagnetic iron oxide) to France for formulation into a dosage form.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the

Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Advanced Magnetics, Inc., 61 Mooney St., Cambridge, MA 02138–1038, has filed an application requesting conditional approval for the export of the bulk drug substance Code 5020 (superparamagnetic iron oxide) to France for formulation into a dosage form. This drug is used as an oral magnetic resonance imaging contrast agent. The application was received and filed in the Center for Drug Evaluation and Research on September 6, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 10, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 19, 1994.

Raymond E. Hamilton,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–26994 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0385]

Drug Export; GenESA® (Arbutamine) System Sterile Solution for Intravenous Infusion 0.05 Milligram Per Milliliter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Gensia, Inc., has filed an application requesting conditional approval for the export of the human drug GenESA® (Arbutamine) System, sterile solution for intravenous infusion 0.05 milligram per milliliter (mg/mL) to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Gensia, Inc., 9360 Towne Centre Dr., San Diego, CA 92121, has filed an application requesting approval for the export of the human drug GenESA® (Arbutamine) System, sterile solution for intravenous infusion 0.05 mg/mL to the United Kingdom. This product is used as an adjunct to echocardiography or radionuclide myocardial perfusion imaging for the evaluation of patients with known or suspected coronary artery disease. The application was received and filed in the Center for Drug Evaluation and Research on September 20, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 10, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 19, 1994.

Raymond E. Hamilton,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–26995 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0384]

Drug Export; Lovastatin Bulk Human Drug Substance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merck & Co., Inc., has filed an application requesting approval for the export of the bulk human drug substance Lovastatin for formulation into Mevacor 20 milligrams (mg) and 40 mg tablets to Spain.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, has filed an application requesting approval for the export of the bulk human drug substance Lovastatin for formulation into Mevacor 20 mg and 40 mg tablets to Spain. While the firm has an approved new drug application for Lovastatin, the subject of this request was produced using an unapproved revised process. This product is used as an adjunct to diet for the reduction of elevated total and low density lipoproteins (LDL) cholesterol levels in patients with primary hypercholesterolemia when the response to diet restricted in saturated fat and cholesterol and to other nonpharmacological measures alone has been inadequate. The application was received and filed in the Center for Drug Evaluation and Research on September 19, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 10, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 19, 1994.

Raymond E. Hamilton,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–26993 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. November 18, 1994, 8 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; Nancy T Cherry or Stephanie A. Milwit, Scientific Advisors and Consultants Staff (HFM–21), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–1054, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Vaccines and Related Biological Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 9, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will hear presentations pertaining to matters previously considered by, pending consideration by, or affecting the advisory process. The committee will also review safety and efficacy data for a live oral polio vaccine.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications or product licensing applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Allergenic Products Advisory Committee

Date, time, and place. November 22, 1994, 9:15 a.m., Holiday Inn Crowne Plaza, Plaza Ballroom, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9:15 a.m. to 10:15 a.m., unless public participation does not last that long; open committee discussion, 10:15 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 5

p.m.; Jack Gertzog, Scientific Advisors and Consultant Staff (HFM–21), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–1054, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Allergenic Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 8, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss issues relevant to: (1) The European Pharmacopeia for Allergen Standardization, and (2) the status of standardized grass extracts, which is the Center for Biologics Evaluation and Research's standardization program for various allergenics.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to three product license applications and two investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 24, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–26950 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. November 17 and 18, 1994, 8:30 a.m., Holiday Inn—Gaithersburg, Goshen Room, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Closed presentation of data, November 17, 1994, 8:30 a.m. to 9:50 a.m.; open committee discussion, 9:50 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; open committee discussion, November 18, 1994, 8:30 a.m. to 3:30 p.m.; Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, code 12536.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 9, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will hear presentations and discuss data submitted regarding the safety and efficacy of the following: (1) Etridronate disodium/calcium carbonate, new drug application (NDA 20–082), (Didrocal®, Proctor and Gamble); (2) calcitonin (nasal spray), NDA 20–313, (Miacalcin®, Sandoz Pharmaceutical); and (3) calcitonin (injectable), NDA 17–769 (Calcimar®, Rhone-Poulenc-Rorer), for an osteoporosis indication.

Closed presentation of data. On November 17, 1994, the committee will hear trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Antiviral Drugs Advisory Committee

Date, time, and place. November 17, 1994, 8:30 a.m., and November 18, 1994, 8 a.m., Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, November 17, 1994, 8:30 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12:30 p.m., unless public participation does not last that long; open committee discussion, 12:30 p.m. to 5:30 p.m.; open committee discussion, November 18, 1994, 8 a.m. to 9 a.m.; closed committee deliberations, 9 a.m. to 2 p.m.; Lee L. Zwanziger or Valerie M. Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Antiviral Drugs Advisory Committee, code 12531.

General function of the committee. The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immunedeficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 11, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On November 17, 1994, the committee will discuss data relevant to NDA 20–460 for oral ganciclovir (Cytovene®, Syntex Laboratories, Inc.) for the treatment of cytomegalovirus retinitis in immunocompromised patients, where the retinitis is stable after prior therapy. On November 18, 1994, the committee will hear scientific presentations on aspects of clinical trial design for drugs used for hepatitis.

Closed committee deliberations. On November 18, 1994, the committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a

minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 24, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–26951 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

RIN 0905–ZA81

Program Announcement and Proposed Special Consideration for Grants for Residency Training and Advanced Education in the General Practice of Dentistry for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1995 Grants for Residency Training and Advanced Education in the General Practice of Dentistry under the authority of section 749, title VII of the Public Health Service Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Comments are invited on the proposed special consideration.

Approximately $3,600,000 will be available in FY 1995 for this program. Total continuation support recommended is approximately $1,600,000. It is anticipated that $2,000,000 will be available to support 16 to 18 competing awards averaging $125,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. There was no competitive cycle for FY 1994. In FY 1993, HRSA reviewed 45 applications for Grants for Residency Training and Advanced Education in the General Practice of Dentistry. Of those applications, 64 percent were approved and 36 percent were disapproved. Seventeen projects, or 38 percent of the applications received, were funded.

Purpose

Section 749 of the PHS Act authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or an approved advanced educational program in the general practice of dentistry; to provide financial assistance to participants in such a program who are in need of

financial assistance and who plan to specialize in the practice of general dentistry; and to fund innovative, nontraditional models for the provision of postdoctoral General Dentistry training.

Eligible Applicants

To be eligible for a Grant for Residency Training and Advanced Education in the General Practice of Dentistry, the applicant shall:

(a) be a public or nonprofit private school of dentistry or an accredited postgraduate dental training institution (hospital, medical center, or other entity) and be accredited by the appropriate accrediting body, and

(b) be located in any one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

To receive support, programs must meet the requirements of final regulations at 42 CFR Part 57, subpart L. The period of Federal support should not exceed 3 years.

Categories of Program Support

There will be no funding preference between residency training programs and advanced educational programs in general dentistry. Grant support will be available for three distinct categories of program development. Applications must address at least one of these categories.

Category 1: Program Initiation

An applicant may request support to assist in establishing a new program. Support may be for 3 years of program operation, or for up to 1 year of program planning and development, followed by 2 years of program operation. An applicant must show, at a minimum, preliminary provisional approval from the Commission on Dental Accreditation before the initial grant award date (grants will be effective July 1, 1995). Before a second year grant award will be made, the grantee must show an accreditation classification of accreditation eligible.

Category 2: Program Expansion

An applicant may request support for an existing program which has full approval accreditation classification to fund the cost of a first-year enrollment increase in the program.

Category 3: Program Improvement

An applicant may request support for an existing program which has conditional approval or provisional approval accreditation to correct deficiencies or weaknesses in order to gain full approval accreditation status. Support is also available for an existing program which has full approval accreditation for changes or additions in faculty, curriculum and/or facilities to enhance the quality of the program.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led national activity for setting priority areas. The grant program for Residency Training and Advanced Education in the General Practice of Dentistry is related to the priority area of Oral Health. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 749 of the Act.

(2) The degree to which the proposed project adequately provides for meeting the project requirements.

(3) The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner.

(4) The extent to which the objectives of the program are consistent with the purposes of the grant program and the extent to which the evaluation methodology will effectively assess the impact of the project.

(5) The extent to which the proposal demonstrates a need for the project.

(6) The extent to which present or potential problems are understood by the applicant and the extent to which solutions to these problems have been developed.

(7) The extent to which the organizational and administrative relationships between institutional and programmatic components of the project enhance the achievement of project objectives.

(8) The extent to which the curriculum will enhance the trainee's ability to become an efficient, effective, and competent practitioner of general dentistry.

(9) The qualifications of proposed staff and faculty.

(10) The extent to which the trainee recruitment and selection process assures that highly qualified trainees with a true interest in general practice are enrolled in the program.

(11) The extent to which the facilities and equipment used in the training program are appropriate to the general practice of dentistry.

(12) The potential of the project to continue on a self-sustaining basis after the period of grant support.

(13) The extent to which the budget justification is reasonable and indicates that institutional support to the project is provided to the maximum extent possible.

(14) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding

factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory General Preference

As provided in section 791(a) of the PHS Act, preference will be given to any qualified applicant that—

(A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

This preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

"High rate" is defined as a minimum of 25 percent of graduates in academic year 1991–92, 1992–93 *and* 1993–94, who spend at least 50 percent of their worktime in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1992–93 and 1993–94, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 59 FR 15741, dated April 4, 1994.

Established Funding Preference

The following funding preference was established in FY 1992 after public comment (57 FR 11325, dated April 2, 1992) and the Administration is extending this preference in FY 1995. In determining the order of funding of approved applications, a funding preference will be given to approved applications which propose to establish new Post Graduate Year-1 training positions, whether through the establishment of a new program or the expansion of an existing program.

First funding within this preference will be for approved applications designed to offer substantial clinical experiences for trainees to provide primary care services to underserved and high risk populations. The experiences must include training at one or more of the following entities: PHS 332 health professional shortage area (HPSA); health care facility that draws at least 50 percent of its patients from HPSA designated areas or populations; PHS 329 migrant health center; PHS 330 community health center; health care facility of the Indian Health Service (IHS); State designated clinic/center serving an underserved population, or other rural/urban health clinic that meets grant program requirements.

Applicants may address the funding preference by:

1. Establishing a new accredited advanced general dentistry program in one or more of the prescribed entities;

2. Establishing trainee off-site rotations into one or more of the prescribed entities as part of a new or existing advanced general dentistry program; or

3. Increasing the number of training positions in an existing advanced general dentistry program that currently provides training experiences in one or more of the prescribed entities, either by location of the primary site or by off-site rotations.

The following guidelines must be addressed within the application when requesting the funding preference:

(a) The new training positions must be PGY–1 positions.

(b) In regard to service to underserved and high risk populations, 20 percent of each resident's training time over the course of the training program must occur in one or more of the above eligible settings.

Established Funding Priority

In determining the order of funding of approved applications, a funding priority will be given to applicants which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Proposed Special Consideration

It is proposed that special consideration will be given to approved applications based on the extent to which they address innovative means of providing advanced general dentistry education that can help meet the current and future demand of such training. This might include new sponsor/co-sponsor arrangements; different organizational and administrative structures; expanded private/public sector affiliations and setting linkages; and creative applications for current instructional telecommunications and computer technologies.

Information Requirements Provision

Under section 791(b) of the Act, the Secretary may make an award under the Grants for Residency Training and Advanced Education in the General Practice of Dentistry program only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations of preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

4. If applicable, the number of recent graduates who have chosen careers in primary health care.

5. The number of recent graduates whose practices are serving medically underserved communities.

6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated August 17, 1993, and will be provided in the application materials.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This approval includes the burden for collection of information for the statutory general preference and for the information requirement provision. (OMB #0915–0060, expiration date 7/31/95)

Definitions

The following definitions apply to those training sites/facilities included in the proposed funding preference listed above:

"Community health center" means an entity as defined in section 330 of the

Public Health Service Act and in regulations at 42 CFR 51c.102(c).

"Health professional shortage area" means an area designated under section 332 of the PHS Act.

"Migrant health center" means an entity as defined in section 329(a) of the Public Health Service Act and in regulations at 42 CFR 56.102(g)(1).

Additional Information

Interested persons are invited to comment on the proposed special consideration. The comment period is 30 days. All comments received on or before December 1, 1994 will be considered before the final special consideration is established. Written comments should be addressed to: Mr. Neil Sampson, Director, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 am and 5:00 pm.

Application Requests

Grant application materials are being mailed only in response to requests received. Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Judy Bowen, Grants Management Specialist (D–30), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6960.

Completed applications should be sent to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Dr. Rosemary Duffy, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–15, Rockville, Maryland 20857, Telephone: (301) 443–6837.

The deadline date for receipt of applications is January 25, 1995. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

Grants for Residency Training and Advanced Education in the General Practice of Dentistry is listed at 93.897 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: September 28, 1994.

Ciro V. Sumaya, M.D., M.P.H.T.M.

Administrator.

[FR Doc. 94–26996 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–15–P

RIN 0905-ZA80

Program Announcement and Proposed Funding Preference for Centers of Excellence in Minority Health Professions Education—Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1995 for Grants for Centers of Excellence (COE) in Minority Health Professions Education will be accepted under the authority of section 739, title VII of the Public Health Service Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Comments are invited on the proposed funding preference stated below.

Approximately $23,481,000 will be available in FY 1995 for this program. The statute requires that, of the amount appropriated for any fiscal year, the first $12 million will be allocated to certain Historically Black Colleges and Universities (HBCUs) described in section 799(1)(A) of the Act and which received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for fiscal year 1987. Of the remaining balance, sixty (60) percent must be allocated to Hispanic and Native American Centers of Excellence, and forty (40) percent must be allocated to the "Other" Centers of Excellence. After supporting 25 noncompeting continuation projects approved in prior years, the remaining funds could support only one competing award. A grant made for a fiscal year may not be made in an amount that is less than $500,000 for each Center.

Purposes

Grants for eligible Historically Black Colleges and Universities (HBCUs), Hispanic, Native American and Other Centers of Excellence must be used by the schools for the following purposes:

1. To establish, strengthen, or expand programs to enhance the academic performance of minority students attending the school;

2. To establish, strengthen, or expand programs to increase the number and quality of minority applicants to the school;

3. To improve the capacity of such school to train, recruit, and retain minority faculty;

4. With respect to minority health issues, to carry out activities to improve the information resources and curricula of the school and clinical education at the school; and

5. To facilitate faculty and student research on health issues particularly affecting minority groups.

Applicants must address the five legislative purposes.

In addition, grants for eligible HBCUs as described in section 799(1)(A) and which have received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for FY 1987 may also be used to develop a plan to achieve institutional improvements, including financial independence, to enable the school to support programs of excellence in health professions education for minority individuals, and to provide improved access to the library and informational resources of the school.

Other Requirements

For Hispanic Centers of Excellence, the health professions schools must agree to give priority to carrying out the duties with respect to Hispanic individuals.

Regarding Native American Centers of Excellence, the health professions school must agree to:

1. Give priority to carrying out the duties with respect to Native Americans;

2. Establish a linkage with one or more public or nonprofit private institutions of higher education whose enrollment of students has traditionally included a significant number of Native Americans for purposes of identifying potential Native American health professions students of the institution who are interested in a health professions career and facilitating their

educational preparation for entry into the health professions school; and

3. Make efforts to recruit Native American students, including those who have participated in the undergraduate program of the linkage school, and assist them in completing the educational requirements for a degree from the health professions school.

With respect to meeting these requirements, a grant for a Native American Center of Excellence may be made not only to a school of medicine, osteopathic medicine, dentistry, or pharmacy that individually meets eligibility conditions but also to such school that has formed a *consortium* of schools that collectively meet conditions, without regard to whether the schools of the consortium individually meet the conditions. The consortium would be required to consist of the school seeking the grant and one or more schools of medicine, osteopathic medicine, dentistry, pharmacy, nursing, allied health, or public health. The schools of the consortium must have entered into an agreement for the allocation of the grant among the schools. Each of the schools must have agreed to expend the grant in accordance with requirements of this program. Each of the schools of the consortium must be part of the same institution of higher education as the school seeking the grant or be located not farther than 50 miles from the school.

To qualify as an Other Minority Health Professions Education Center of Excellence, a health professions school (i.e., a school of medicine, osteopathic medicine, dentistry, or pharmacy) must have an enrollment of underrepresented minorities above the national average for such enrollments of health professions schools.

Eligibility

Section 739 authorizes the Secretary to make grants to schools of medicine, osteopathic medicine, dentistry and pharmacy for the purpose of assisting the schools in supporting programs of excellence in health professions education for Black, Hispanic and Native American individuals, as well as for HBCUs as described in section 799(1)(A) and which have received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for FY 1987.

To qualify as a COE, a school is required to:

1. Have a significant number of minority individuals enrolled in the school, including individuals accepted for enrollment in the school;

2. Demonstrate that it has been effective in assisting minority students of the school to complete the program of education and receive the degree involved;

3. Show that it has been effective in recruiting minority individuals to attend the school, including providing scholarships and other financial assistance to such individuals, and encouraging minority students of secondary educational institutions to attend the health professions school; and

4. Demonstrate that it has made significant recruitment efforts to increase the number of minority individuals serving in faculty or administrative positions at the school.

These entities must be located in any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In fiscal year 1994, 25 awards were made, including four (4) competing renewals to Historically Black Colleges and Universities.

Period of Support

Payments under grants for Centers of Excellence may not exceed 3 years, subject to annual approval by the Secretary, the availability of appropriations, acceptable progress toward meeting originally stated objectives and negotiation of a detailed budget justification.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. The Centers of Excellence Program is related to the priority area of *Educational and Community-Based Programs*. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U. S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the applicant can arrange to continue the proposed project beyond the federally-funded project period;

2. The degree to which the proposed project meets the purposes described in the legislation;

3. The relationship of the objectives of the proposed project to the goals of the plan that will be developed;

4. The administrative and managerial ability of the applicant to carry out the project in a cost effective manner;

5. The adequacy of the staff and faculty to carry out the program;

6. The soundness of the budget for assuring effective utilization of grant funds, and the proportion of total program funds which come from non-Federal sources and the degree to which they are projected to increase over the grant period;

7. The number of individuals who can be expected to benefit from the project; and

8. The overall impact the project will have on strengthening the school's capacity to train the targeted minority health professionals and increase the supply of minority health professionals available to serve minority populations in underserved areas.

Other Considerations

In addition, the following funding factor may be applied in determining the funding of approved applications:

A funding preference is defined as the funding of a specific category or group of applications ahead of other categories or groups of approved applications.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for a funding factor will be reviewed and given full consideration for funding.

Proposed Funding Preference

The following funding preference is proposed for FY 1995:

A funding preference will be given to competing continuation (renewal) applications for Centers of Excellence programs whose current project periods end in fiscal year 1995. The purpose of this preference is to maximize Federal and non-Federal investments in accomplishing the nature and scope of the legislative purposes of the Centers of Excellence Program. To realize the intended impact of the COE program more than one grant period is required. This funding preference is intended to direct assistance to quality COE programs that have documented sustained or increased accomplishments under this program.

Additional Information

Interested persons are invited to comment on the proposed funding preference. The comment period is 30 days. All comments received on or before November 1, 1994 will be considered before the final funding preference is established.

Written comments should be addressed to: Clay E. Simpson, Jr., Ph.D., Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Statutory Definitions

"Health professions schools" mean schools of medicine, osteopathic medicine, dentistry and pharmacy, as defined in section 739(h) which are accredited as defined in section 799(1)(E) of the Act. For purposes of the HBCUs, this definition means those schools described in section 799(1)(A) of the Act and which have received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for fiscal year 1987.

"Native Americans" means American Indians, Alaskan Natives, Aleuts, and Native Hawaiians.

"Program of Excellence" means any programs carried out by a health professions school with funding under section 739 Grants for Centers of Excellence in Minority Health Professions Education.

Other Definitions

The following definitions established in fiscal year 1991 after public comment, 56 FR 22440, dated May 15, 1991, are being continued in fiscal year 1995. Osteopathic medicine was added by Pub. Law 102–408.

"A significant number of minority individuals enrolled in the school" means that to be eligible to apply for a Hispanic COE, a medical, osteopathic medicine, or dental school must have at least 25 enrolled Hispanic students. Schools of pharmacy must have at least 20 enrolled Hispanic students. To apply as a Native American COE, an eligible medical or dental school must have at least eight enrolled Native American students and a school of pharmacy or osteopathic medicine must have at least five enrolled Native American students. To be eligible to apply for an Other Minority Health Professions Education COE, an eligible school must have above the national average of underrepresented minorities (medicine 15%, osteopathic medicine 8%, dentistry 15%, pharmacy 11%) enrolled in the school. These numbers represent the critical mass necessary for a viable program. A viable program is one in which there is a sufficient number of students to warrant a Center of Excellence level educational program. Data from relevant professional associations include sharp differentiation in target group numbers among schools. Stated numerical levels are just above the median for schools reporting a critical mass necessary for a viable program. The requirement that schools applying for Other Minority Health Professions Education Centers have an enrollment of underrepresented students that is above the national average for that discipline is statutory.

"Effectiveness in Providing Financial Assistance" will be evaluated by examining the data on scholarships and other financial aid provided to the targeted group in relation to the scholarships and financial aid provided to the total school population.

"Effectiveness in Recruitment" will be evaluated by examining the first-year and total enrollments of targeted students in relation to the first-year and total enrollments for the entire school.

"Effectiveness in Retaining Students" will be determined by retention rates for the targeted group and academic and non-academic support systems operative for the target group of students at the school.

"Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin.

"Minority" means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black, or Hispanic.

"Underrepresented Minority" means, with respect to a health profession, racial and ethnic populations that are underrepresented in the health profession relative to the number of individuals who are members of the population involved. This definition encompasses Blacks, Hispanics, Native Americans, and, potentially, various subpopulations of Asian individuals. Applicants must evidence that any particular subgroup of Asian individuals is underrepresented in a specific discipline.

Maintenance of Effort

A health professions school receiving a grant will be required to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the school for the fiscal year preceding the fiscal year for which the school receives such a grant. In addition, the school agrees that before expending grant funds, the school will expend amounts obtained from sources other than the grant.

Application Requests

Requests for grant application materials and questions regarding grants policy and business management issues should be directed to: Ms. Diane Murray (D–34), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857, FAX: (301) 443–6343.

Completed applications should be returned to the Grants Management Branch at the above address.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is February 3, 1995. Applications shall be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Postmarked on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly

dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

Each applicant is responsible for the completeness of its application, which will be reviewed as submitted.

To obtain specific information regarding the aspects of this grant program, direct inquiries to: A. Roland Garcia, Ph.D., Chief, Centers of Excellence Section, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, HRSA, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4493, FAX: (301) 443–5242.

This program is listed at 93.157 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: September 28, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–26997 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

National Toxicology Program; Update on the Biennial Report on Carcinogens; Review of the Criteria Used for Inclusion of Substances by an Ad Hoc Working Group of the National Toxicology Program Board of Scientific Counselors: Call for Nomination of Potential Members

Action—Request for Public Input

An *ad hoc* working group of the National Toxicology Program (NTP) Board of Scientific Counselors is being established to review and make recommendations on the criteria for listing substances in the Biennial Report on Carcinogens (BRC). The working group will number approximately 35 members and will include representatives from academia, history, labor, public interest groups, state and local health officials, government, and the public at large. A two-day public meeting of the working group will be held in mid-January 1995 in Washington, D.C., with specific dates and location to be determined.

Nominations of individuals for consideration for membership on the working group are invited and encouraged. Please forward your nominations by November 14, 1994, to Dr. C. W. Jameson, NIEHS, MD WC–04, P.O. Box 12233, Research Triangle Park, N.C. 27709, or fax (919) 541–2242.

Background

The Biennial Report on Carcinogens (BRC) is prepared in response to Section 301 (b)(4) of the Public Health Service Act which stipulates that the Secretary of the Department of Health and Human Services shall publish a report which contains a list of all substances (i) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (ii) to which a significant number of persons residing in the United States are exposed.

The selection process for listing substances in the BRC will be revised to add review by the NTP Board of Scientific Counselors. The objectives for revising the process are to: broaden the input at all stages throughout the process; broaden the scope of scientific review, and provide a review of the criteria used for inclusion on substances in the BRC. The review of the criteria for selecting a substance for listing in the BRC is the first step in the process.

The timetable below outlines the procedures established for the review of the criteria used to select substances. This review includes the establishment of an ad hoc working group of the NTP Board of Scientific Counselors to initially review the criteria and make recommendations to the Board.

Timetable for Criteria Review Process

mid-January 1995 A two-day public meeting of the NTP Board *ad hoc* BRC working group, in Washington, D.C., to review and make recommendations on the criteria for listing substances in BRC. Specific location and dates to be determined.

mid-February 1995 A public meeting of the full NTP Board of Scientific Counselors to review the ad hoc working group's report and develop the Board's recommendations concerning the selection criteria to the Director, NTP.

March 1995 NIEHS review of the criteria and NTP Board recommendations.

April 1995 NTP Executive Committee BRC subcommittee review of criteria and the NTP Board's recommendations.

May 1995 NTP Executive Committee review all criteria recommendations.

June 1995 Submission of report and recommendations by Director, NTP, to the Secretary, DHHS, concerning the criteria for selection of a substance for listing in the BRC.

Draft Discussion Document to be Available

A draft discussion document concerning the existing criteria for selection is to be provided to the NTP Board's ad hoc working group and will be available by December 16, 1994. Copies of the document can be requested by contacting Dr. Jameson at the above address.

Registration for Public Meeting

Public comments concerning the criteria for listing a substance in the BRC will be accepted during the first day of the ad hoc working group's public meeting in mid-January. Oral comments will be limited to five minutes to permit maximum participation. Written comments accompanying oral statements are encouraged. Those wishing to submit only written comments to be considered by the ad hoc working group are requested to submit them by January 13, 1995. To register to make oral comments about the criteria or to attend the ad hoc working group meeting as an observer, contact Dr. Jameson at the above address or fax number. Although advance registration is not mandatory, it would be helpful in organizing the meeting. Specific dates and location will be provided upon confirmation of registration and will also be posted in the **Federal Register** in December.

Dated: October 26, 1994.

Richard A. Griesemer,

Deputy Director, National Toxicology Program.

[FR Doc. 94–26974 Filed 10–31–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee on November 29, 1994, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. and is open to the public. The primary agenda

topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program. Additionally, the draft Technical Report of the short-term toxicity study on 1-nitropyrene will be reviewed. This is the first NTP short-term report where the conclusion has been drawn that the chemical is a likely carcinogen in the absence of neoplasms in an NTP study.

Tentatively scheduled to be peer reviewed on November 29 are draft Technical Reports of six two-year studies, listed alphabetically, along with supporting information in the attached table. Similar information is given for the short-term report on 1-nitropyrene. All studies were done using Fischer 344 rats and B6C3F$_1$ mice, while one two-year study also employed Sencar mice. The order of review is given in the far right column of the table. Copies of the draft Reports may be obtained, as available, from: Central Data Management, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419).

Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone, by FAX, or by mail no later than November 22, 1994, and provide a written copy in advance of the meeting so copies can be made and distributed to all Subcommittee members and staff and made available at the meeting for attendees. Oral presentations should supplement and not just repeat the written statement. *Presentations should be limited to no more than five minutes.*

The program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies by others, as well as current production data, human exposure information, and use patterns on any of the chemicals listed in this announcement. Please contact Central Data Management at the address given above, and they will relay the information to the appropriate staff scientist.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709 (telephone 919/541–3491; FAX 919/541–2260) will furnish a roster of Subcommittee members prior to the meeting. Summary minutes subsequent to the meeting will be available upon request.

Attachment

Dated: October 26, 1994.

Richard A. Griesemer,

Deputy Director, National Toxicology Program.

SUMMARY DATA FOR TECHNICAL REPORTS SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE

[November 29, 1994]

Chemical/CAS No.	Project leader/ technical report No.	Primary uses	Route/exposure levels	Study laboratory	Review order
LONG-TERM STUDIES					
2,2-Bis (bromomethyl)-1, 3-Propanediol; 3296–90–0.	Dr. J. Dunnick, 919–541–4811; TR–452.	Flame retardant for epoxy, polyester, and urethane forms. Chemical intermediate.	Dosed-Feed (NIH–07): R: 0, 2500, 5000, or 10000 PPM; 70/group M: 0, 312, 625, or 1250 PPM; 60/group.	Southern Research Institute.	5
Isobutyl nitrite; 542–56–3.	Dr. K. Abdo, 919–541–7819; TR–448.	Industrial intermediate in chemical synthesis. (TDB).	Inhalation (air): R&M: 0, 37, 75, or 150 PPM.	IIT Research Institute.	1
Nickel (II) oxide; 1313–99–1.	Dr. J. Dunnick, 919–541–4811; TR–451.	Chemical intermediate for stainless and alloy steels. Catalysts. Electrical devices. Thermister material.	Inhalation (air): R: 0, .62, 1.25, or 2.5 M: 0, 1.25, 2.5, or 5.0 mg/m3; 50/group.	Lovelace Inhal Tox Res Inst (DOE).	3
Nickel sulfate hexahydrate, 10101–97–0.	Dr. J. Dunnick, 919–541–4811, TR–454.	Nickel plating. Blackening zinc and brass. Mordant in dyeing.	Inhalation (air): R: 0, 0.125, 0.25, or 0.5 M: 0, .25, .5, or 1.0 mg/m3; 50/group.	Lovelace Inhal Tox Res Inst (DOE).	4
Nickel subsulfide; 12035–72–2.	Dr. J. Dunnick, 919–541–4811; TR–453.	Major component in nickel refinery flue dust. Not used commercially in U.S.	Inhalation (air): R: 0, 0.075, or 0.15 M: 0, 0.6, or 1.2 mg/m3; 50/group.	Lovelace Inhal Tox Res Inst (DOE).	2
Triethanolamine; 102–71–6.	Dr. J. Bucher, 919–541–4532; TR–449.	Intermediate in manuf. surfactants, textile specialties, waxes, polishes, herbicides, petroleum demulsifiers, toilet goods.	Topical (acetone): MR: 0, 32, 63, or 125; FR: 0, 63, 125 or 250; MM: 0, 200, 630, or 2000; FM: 0.	Battelle Columbus Laboratory.	6
Triethanolamine; 102–71–6.	Dr. J. Bucher, 919–541–4532; TR–449.	Intermediate in manuf. surfactants, textile specialties, waxes, polishes, herbicides, petroleum demulsifiers, toilet goods, cement additives, cutting oils, in making mineral and veg. oil emulsions, solvent, pharmaceutic aid (alkalizer) (Merck 1989).	Topical (acetone): MR: 0, 32, 63, or 125; FR: 0, 63, 125, or 250; MM: 0, 200, 630, or 2000; FM: 0, 100, 300, or 1000 mg/kg; 60/group.	Battelle Columbus Laboratory.	6
SHORT-TERM TOXICITY STUDY					
1-Nitropyrene; 5522–43–0.	Dr. P. Chan, 919–541–7561; TOX–34.	Byproduct of combustion primary nitrated PAH emitted in diesel engine exhaust.	Inhalation (air): R: 0, 0.5, 2.0, 8.0, 20.0, or 50.0 mg/m3 12/s/group (core); 5/s/group for lung burden.	Batteile Northwest Laboratory.	7

R=Rats.
M=Mice.

[FR Doc. 94–26973 Filed 10–31–94; 8:45 am]
BILLING CODE 4140–01–M

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.
ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Girish C. Barua, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext. 263; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Anti-HIV Compositions Containing Native And Recombinant Peptides

Fischinger, P.J., Wong-Staal, F., Gallo, R.C., Matthews, T.J. (NCI)
Filed 23 Feb 89
Serial No. 07/314,664

A kit containing substantially pure native and recombinant HIV glycoproteins is valuable for testing anti-HIV vaccines or as diagnostic aids for detecting HIV infection. Previously, it has been difficult to obtain large, pure quantities of HIV proteins for use in vaccines or diagnostic procedures. This kit contains deglycosylated envelope proteins as well as recombinant fusion molecules containing HIV and non-HIV amino acid sequences.

Production Of Complementary DNA Representing Hepatitis A Viral Sequences By Recombinant DNA Methods And Uses Therefor

Ticehurst, J., Baltimore, D., Feinstone, S.M., Purcell, R.H., Racaniello, V.R., Baroudy, B.M., Emerson, S.U. (NIAID)
Filed 6 Nov 91
Serial No. 07/788,262 (CIP of 07/256,135, CON of 06/654,942, CIP of 06/536,911)

A method for the production and use of single- and double-stranded (ds) cDNA representing hepatitis A virus (HAV) sequences has been discovered, including an infectious, full-length cDNA clone of wild-type HAV. Large quantities of the novel HAV cDNA can be harvested at a relatively low cost via insertion of the cDNA molecules into a recombinant DNA vector and subsequent transformation in appropriate cells; modification of bacteria by genetic engineering permits for the production of ds HAV cDNA. The cDNA molecules hold substantial diagnostic potential because they are highly specific and very sensitive to HAV; they can also be used in the production of either HAV antigen or antibodies to HAV antigen for possible vaccine development. Currently, no vaccine is available for protection against HAV infection.

Mammalian Guanine Nucleotide-Binding Protein With An ADP-Ribosylation Factor Domain (ARD1)

Moss, J., Mishima, K., Nightingale, M.S., Tsuchiya, M. (NHLBI)
Filed 19 Apr 93
Serial No. 08/049,473

ADP-ribosylation factors (ARFs) constitute one family of the ~—20–kDa guanine nucleotide-binding *ras* superfamily. ARFs regulate secretory, endocytic, exocytic, and nuclear fusion events and activate phospholipase D and cholera toxin. ARD1 is a 64-kDa protein containing an ARF domain at its carboxy terminus. This invention includes a cell line transfected with an expression vector containing either rat or human ARD–1 DNA and an immunoassay kit for detecting ARD proteins in samples.

Hepatitis A Vaccine

Nainan, O.V., Margolis, H.S., Robertson, B.H., Brinton, M.A., Ebert, J.W. (CDC)
Filed 6 Jul 93
Serial No. 08/087,016 (FWC of 07/678,828)

A hepatitis A virus (HAV) was isolated from cynomolgus macaques, and the capsid region of this new HAV was sequenced. It was found that the amino acid sequence within the immunodominant site of the capsid region is significantly different from that of other HAV isolates. This new virus is suitable for preparing a whole virus vaccine for preventing hepatitis A in animals and, potentially, in humans.

Hepatitis A Vaccine

Cohen, J.I., Purcell, R.H., Feinstone, S.M., Ticehurst, J.R. (NIAID)
Filed 13 Sep 93
Serial No. 08/120,646 (FWC of 07/789,640, CON of 07/462,916, CON of 07/088,220)

A full-length DNA analog of the hepatitis A virus genome and RNA transcripts of the DNA analog can be mutated to produce an infectious hepatitis A virus suitable for a vaccine. Prior technologies have used cell culture techniques, rather than recombinant DNA methods, in an attempt to produce an acceptable hepatitis A entity. This new method overcomes the difficulties associated with the random mutation processes that occur with conventional methods.

Nucleic Acids Of A Novel Hantavirus And Reagents For Detection And Prevention Of Infection

Nichol, S.T. (CDC)
Filed 7 Oct 93
Serial No. 08/133,591 (CIP of 08/084,724)

An outbreak of acute illness in the Four-Corners region of the United States in the spring of 1993 has been associated with the Muerto Canyon strain of hantavirus. The identification of specific nucleotide sequence information for this virus will aid in the development of diagnostic assays and vaccines.

Plasmids For Efficient Expression Of Synthetic Genes In E. Coli

Fields, H.A., Khudyakov, Y. (CDC)
Filed 25 Oct 93
Serial No. 08/141,917

This invention covers the development of a recombinant gene encoding the hepatitis C nucleocapsid protein, which offers to significantly improve the detection and diagnosis of this disease. Hepatitis C virus (HCV) is a recently identified agent responsible for most cases of post-transfusion non-A, non-B hepatitis worldwide. The N-terminal region of the HCV polyprotein is processed into proteins C (a nucleocapsid) and E1 and E2/NS1 (envelope proteins). Previously, there has been no acceptable immunoassay kit for detecting HIV infection because growing the virus in bacteria has been difficult. Therefore, there has been no large-scale source of HCV proteins from which to stimulate the production of antibodies for immunoassays. This problem has been addressed by cloning the sequence from HCV nucleocapsid protein and inserting it into an expression vector with a Shine-Dalgarno, which enhances expression of the protein encoded by the nucleotide sequence. Thus, an *E. coli* can be used as a host for the vector, and large amounts of protein are produced even

when there is low copy number of the vector.

Clones Encoding Mammalian ADP-Ribosylarginine Hydrolases

Moss, J., Stanley, S.J., Nightingale, M.S., Murtagh, J.J., Monaco, L., Takada, T. (NHLBI)
Serial No. 08/183,214 (DIV of 07/888,231)

ADP-ribosylation of arginine residues in proteins may be involved in cell adhesion and is crucial for the action of cholera toxin and *E. coli* heat-labile enterotoxin, agents involved in the pathogenesis of cholera and traveller's diarrhoea, respectively. ADP-ribosylation is reversed by ADP-ribosylarginine hydrolases, which cleave the ADP-ribose-arginine bond.

ADP-ribosylarginine hydrolases from a variety of mammalian species and tissues were isolated, and the coding regions for the hydrolases were cloned and expressed. The availability of this new hydrolase cDNA and expression system provides a novel molecular approach for studying the role of ADP-ribosylation in cell function. The gene products may be useful in treating or preventing a variety of bacterial diseases, including cholera, that appear to be mediated via ADP-ribosylation.

Novel Anti-Mycobacterial Compositions And Their Use For The Treatment Of Tuberculosis And Related Diseases

Barry, C.E., Yuan, Y. (NIAID)
Filed 18 Mar 94
Serial No. 08/210,519

This invention comprises a number of novel anti-mycobacterial compositions, which offer to significantly improve the treatment of mycobacterial infection such as tuberculosis. *Mycobacterium* is a genus of bacteria encompassing a number of organisms, many of which are highly pathogenic in humans. The most well known of these are *M. tuberculosis*, which causes pulmonary tuberculosis, and *M. leprae*, which causes leprosy. Tuberculosis is a major worldwide problem, especially among HIV-infected and other immune-compromised individuals. Present treatments for tuberculosis often have toxic side effects or have limited utility because of the growing number of multi-drug resistant strains of *M. tuberculosis*. These newly discovered anti-mycobacterial compounds, which are analogs of thiatetracosanoate, have been shown effective in the treatment of mycobacterial infections and are relatively nontoxic. They may be given alone or in combination with standard anti-mycobacterial drugs and are valuable as antiseptics as well as therapeutics.

Dated October 21, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–26971 Filed 10–31–94; 8:45 am]

BILLING CODE 4140–01–P

Technology Assessment Conference on Bioelectrical Impedance Analysis in Body Composition Measurement

Notice is hereby given of the NIH Technology Assessment Conference on "Bioelectrical Impedance Analysis in Body Composition Measurement," which will be held December 12–14, 1994, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on December 12 and 13 and at 9 a.m. on December 14.

BIA has become a popular and widely used method to estimate body composition. A number of instruments have been manufactured for use in estimating body composition. The technology is relatively simple, quick, easy, and noninvasive. Similar to other methods of assessing body composition, BIA can be used to estimate body composition by making several assumptions regarding the composition of fat and fat-free body mass.

Consequently, modification of some of the assumptions and other small differences among the various instruments has led to the use of different equations in the derivation of the final estimate of body composition. The relationships among various components of the body such as fat mass and lean body mass are generally assumed to be static. However, the hydration status of the subject, room or skin temperature, age, gender, ethnic origin, level of physical fitness, and other individual characteristics may all contribute to differences in the observed measurements within BIA.

Consequently, a Technology Assessment Conference on this methodology, its validity, and the appropriate interpretation of the data would be worthwhile.

This conference will bring together experts from various perspectives with regard to this methodology. Presentations will highlight the necessary standardization of the methodology and provide the basis for the different equations that have been derived. Mechanical and physiological conditions that may influence BIA measurements will be discussed along with suggestions to minimize the variability. Various clinical characteristics influencing BIA measurements will also be presented. Finally, the indications and limitations for the use of this technology and the clinical assessment of individuals or populations will be discussed. Although this instrumentation has often been used to estimate the level of adiposity in the individual, it is beginning to find greater clinical use in the measurement of body cell mass and total body water in other clinical conditions.

After 1½ days of presentations, audience discussion, and the opportunity for public and industry comment, an independent, non-Federal panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The statement will address the following key questions:

- What does BIA measure in terms of electrical and biological parameters?
- How should BIA be performed and how can BIA measurements be standardized?
- How safe and valid is the BIA technology in the estimation of levels of adiposity?
- How safe and valid is the use of BIA technology to estimate body cell mass and total body water status?
- What are the appropriate clinical uses of BIA technology and what are the limitations?
- What are the future directions for basic science, clinical research, and epidemiological evaluation of body composition measurement?

Advance information on the conference program and conference registration materials may be obtained from: Laura Hazan, Technical Resources, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153.

On the second day of the conference, time has been allocated for 5-minute formal oral presentations by concerned individuals or organizations. Those individuals or groups wishing to send a representative to contribute during this session must contact Ms. Elsa Bray by 5 p.m. EST, November 28, 1994 at: Office of Medical Applications of Research, National Institutes of Health, Federal Building, Room 618, 7550 Wisconsin Avenue, Bethesda, Maryland 20892–9120, phone (301) 496–1144. If the number of requests received exceeds the slots available, presenters will be chosen by lot, and those selected will be notified by December 5, 1994.

The primary sponsors for this conference are the National Institute of Diabetes and Digestive and Kidney Diseases and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Institute of Child Health and

Human Development and the National Institute on Aging.

The technology assessment statement will be submitted for publication in professional journals and other publications. In addition, the technology assessment statement will be available beginning December 14, 1994 from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: October 24, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–26975 Filed 10–31–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Co-Exclusive License; Vector With Multiple Target Response Elements Affecting Gene Expression

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice is in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a co-exclusive world-wide license to practice the invention embodied in U.S. Patent Application SN 07/596,299 (CIP of 07/467,497) entitled "Vector With Multiple Target Response Elements Affecting Gene Expression" to Targeted Genetics Corporation, of Seattle, Washington. The patent rights in this invention have been assigned to the United States of America.

The prospective license will be royalty-bearing, will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7, and will be co-exclusive with one other party, Genetic Therapy, Inc. It is anticipated that this license will be limited to the field of use of gene therapy treatment for Acquired Immunodeficiency Syndrome (AIDS). Publication of this notice should be considered a modification of an earlier notice "Prospective Grant Of Exclusive License: Vectors For Gene Therapy Treatment Of AIDS" (Vol. 57, No. 169, Monday, August 31, 1992, page 39405).

This prospective co-exclusive license may be granted unless, within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent application describes the design and construction of DNA sequences that will inhibit viral replication through competitive inhibition of tat function and by down-regulating HIV–1 LTR-directed gene expression. Inhibition is mediated via the product of transcription of the newly constructed vector. The vector product is directed against the AIDS virus (HIV) and may be used in vaccine development (intracellular immunization) and as a therapeutic agent for treating viral infections. Unlike other similar vectors, this invention is not limited by retroviral mutations or by variations between different HIV isolates.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852. Telephone: (301) 496–7735 extension 266; Facsimile: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application(s). Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before [insert date 60 days after date of publication in the **Federal Register**] will be considered.

Dated: October 24, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–26972 Filed 10–31–94; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N–94–3693; FR–3532–N–02]

Announcement of Funding Awards for Fiscal Year 1994 Community Outreach Partnership Centers

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1994 Community Outreach Partnership Centers Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to establish and operate Community Outreach Partnership Centers that will: Conduct competent and qualified research and investigation on theoretical or practical problems in large and small cities; and facilitate partnerships and outreach activities between institutions of higher education, local communities, and local governments to address urban problems.

FOR FURTHER INFORMATION CONTACT: Lawrence L. Thompson, Acting Director, Office of University Partnerships, U.S. Department of Housing and Urban Development, room 8100, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708–1600. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The Community Outreach Partnership Centers Program was enacted in the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992). Initially administered by the Assistant Secretary for Community Planning and Development, the program was transferred August 15, 1994 to the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, this newly created Office will administer HUD's ongoing grant programs to institutions of higher education as well as create initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Community Outreach Partnership Centers Program provides funds for: Research activities which have practical application for solving specific problems in designated communities and neighborhoods; outreach, technical assistance and information exchange activities which are designed to address specific problems in designated communities and neighborhoods. The specific problems that the local program must focus on are problems associated with housing, economic development, neighborhood revitalization.

infrastructure, health care, job training, education, crime prevention, planning, and community organizing.

On January 4, 1994 (59 FR 488), HUD published a Notice of Funding Availability announcing the availability of $7 million in FY 1994 funds for the Community Outreach Partnership Centers Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance under the FY 1994 Community Outreach Partnership Centers Funding Competition, by Name, Address, and Grant Amount

1. University of California—Los Angeles, Prof. Jacqueline Leavitt, Architecture and Urban Planning, 405 Hilgard Avenue, Los Angeles, CA 90024, Grant Amount: $549,415
2. Trinity College, Eddie A. Perez, Director of Community Relations, 300 Summit Street, Hartford, CT 06106, Grant Amount: $580,000
3. Duquesne University, Dr. G. Evan Stoddard, Graduate Center for Social and Public Policy, College Hall, Room 210, 600 Forbes Avenue, Pittsburgh, PA 15282, Grant Amount: $580,000
4. The City College of CUNY, Dr. Ghislaine Hermanuz, Director, City College Architecture Center, Shepard Hall, Convent Avenue and 138th Street, New York, NY 10031, Grant Amount: $580,000
5. University of California—Berkeley, Dr. Victor Rubin, Executive Director, University-Oakland Metropolitan Forum, 316 Webster Hall, Berkeley, CA 94720, Grant Amount: $580,000
6. Texas A & M University, Mr. A. Kermit Black, Director, Center for Housing and Urban Development, College of Architecture, College Station, TX 77843, Grant Amount: $580,000
7. University of Illinois at Chicago, Ms. Laurie Alperin, Assistant Director, Great Cities Office, 601 South Morgan Street, M/C 102, Chicago, IL 60607, Grant Amount: $580,000
8. Arizona State University, Dr. Rob Melnick, Director, Morrison Institute of Public Policy, P.O. Box 874405, Tempe, AZ 85287, Grant Amount: $580,000
9. Wayne State University, Dr. Larry C. Ledebur, Director, Center for Urban Studies, Faculty Administration Building, 656 West Kirby, Detroit, MI 48202, Grant Amount: $580,000
10. Pratt Institute, Dr. Brian Sullivan, Associate Director, Pratt Institute Center for Community and Environmental Development, 379 DeKalb Avenue, Second Floor, Brooklyn, NY 11205, Grant Amount: $580,000
11. University of South Florida, Ms. Virginia S. Roo, Director, Institute of Government, 4202 East Fowler Avenue, Tampa, FL 33620, Grant Amount: $370,417
12. Merrimack College, Ms. A. Patricia Jaysane, Executive Director, Urban Institute, 55 East Haverhill Street, Lawrence, MA 01841, Grant Amount: $463,941
13. Yale University, Ms. Sally Tremaine, Assistant Director, Grant and Contract Administration, 12 Prospect Place, New Haven, CT 06511, Grant Amount: $580,000
14. The University of Texas—Pan American, Mr. Roland S. Arriola, Director, Center for Entrepreneurship and Economic Development, 1201 West University Drive, Rm BA124, Edinburg, TX 78539, Grant Amount: $300,000.

Dated: October 25, 1994.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 94–26956 Filed 10–31–94; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–05–1430–00]; UTU–71138, UTU–71175, UTU–72794

Resource Management Plans; Beaver River Resource Area, UT

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent.

SUMMARY: The BLM is proposing to amend the Cedar, Beaver, Garfield, Antimony (CBGA) Resource Management Plan (RMP) approved October 1, 1986, to allow for the disposal of certain public lands in Beaver and Iron Counties, Utah.

DATES: For a period of 30 days from December 1, 1994, interested parties may submit comments on the issues to be addressed in the subsequent Environmental Analysis.

ADDRESSES: Comments should be addressed to Arthur L. Tait, Area Manager, Beaver River Resource Area Office, 365 South Main, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait at the above address or telephone (801) 586–2458.

SUPPLEMENTARY INFORMATION: The purpose of this proposed amendment is to make certain public lands available for noncompetitive sale to Beaver and Iron Counties pursuant to the Recreation and Public Purposes Act of 1926, as amended. Also, an additional 10 acres of public land would be made available for disposal by direct sale to Sheldon Jessop of Adamsville, Utah, pursuant to section 203 of the Federal Land Policy and Management Act of 1976.

The public land being considered for sale is described as follows: Salt Lake Meridian, T. 29 S., R. 7 W., sec. 8, NW¼ NE¼, comprising 40 acres; T. 29 S., R. 8 W., sec. 20, W½W½SW¼SE¼, comprising 10 acres; and T. 36 S., R. 15 W., sec. 20, NW¼NE¼NE¼SW¼, NW¼NE¼SW¼, comprising 12.547 acres. The existing plan does not identify these lands as suitable for disposal. However, because of resource values, public values, and objectives involved, the public interest may be well served by offering these lands for sale. An Environmental Assessment(s) will be prepared using an interdisciplinary team to analysis the impacts of this proposed amendment as well as other alternatives. General issues to be addressed in the forthcoming Environmental Assessment(s) include the possible social, economic, and resource consequences of these proposed amendments. No additional planning criteria beyond those previously identified in the Cedar, Beaver, Garfield, Antimony Resource Management Plan are contemplated.

Mat Millenbach,

State Director.

[FR Doc. 94–26992 Filed 10–31–94; 8:45 am]

BILLING CODE 4310–DQ–M

[NM–060–05–1610–00] (600)

Availability of Draft Roswell Resource Management Plan/Environmental Impact Statement, Draft Carlsbad Resource Management Plan Amendment/Environmental Impact Statement, and Public Hearing Schedule

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability for public review of the

Draft Roswell Resource Management Plan/Environmental Impact Statement (RMP/EIS) and the Draft Carlsbad Resource Management Plan Amendment/Environmental Impact Statement (RMPA/EIS). The Draft RMP/EIS and Draft RMPA/EIS have been combined in a single document.

The Carlsbad RMPA/EIS addresses the management of oil and gas resources on about 2.2 million acres of public surface and subsurface, and an additional 1.6 million acres of federal mineral estate, in Lea and Eddy counties, and the "bootheel" of Chaves County, in southeast New Mexico. The Roswell RMP/EIS addresses the comprehensive management of all resources and uses on about 1.5 million acres of public surface and subsurface, and an additional 8.4 million acres of federal mineral estate, in the remainder of Chaves County and all of Lincoln, DeBaca, Roosevelt, Curry, Quay, and Guadalupe counties, in east-central and southeast New Mexico.

The Roswell RMP/EIS focuses on resolving three key issues that were identified with public involvement early in the planning process. These issues are: (1) oil and gas operations; (2) land tenure adjustment; and, (3) access. Additionally, two management opportunities (non-issue related practices or land-use allocations that need modification) were identified. These are: (1) recreation; and (2) wildlife habitat management. The Carlsbad RMPA/EIS is focused solely on resolving the oil and gas operations issue.

Notice also is given that two public hearings will be held to seek public comment on the adequacy of the Draft Roswell RMP/EIS and the Draft Carlsbad RMPA/EIS, including alternatives and the impacts of those alternatives.

DATES: Written comments on the Draft Roswell RMP/EIS and the Draft Carlsbad RMPA/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Availability of these drafts in the **Federal Register.** Public hearings on the drafts will be held on: Jan. 10, 1995, from 1:00 to 5:00 p.m. and 7:00 to 9:00 p.m., at the Pearson Auditorium on the New Mexico Military Institute campus, Roswell, New Mexico; and, Jan. 11, 1995, from 1:00 to 5:00 p.m. and 7:00 to 9:00 p.m., at the BLM's Carlsbad Resource Area office, 620 East Greene, Carlsbad, New Mexico.

Oral and written testimony will be accepted at the hearings. Oral comments will be limited to five minutes and should be accompanied with written text, if possible.

In addition to the public hearings, three open houses are scheduled for:

Jan 3, 1995, from 1:00 to 5:00 p.m., and 6:00 to 8:00 p.m. at the office of the Ruidoso Chamber of Commerce, 720 Sudderth, Ruidoso, New Mexico;

Jan 4, 1995, from 1:00 to 5:00 p.m. and 6:00 to 8:00 p.m. at the BLM's Carlsbad Resource Area office, 620 East Greene, Carlsbad, New Mexico; and,

Jan 5, 1995, from 1:00 to 5:00 p.m. and 6:00 to 8:00 p.m. at the BLM's Roswell District Office conference room, 1717 West 2nd Street, Roswell, New Mexico.

ADDRESSES: Written comments on the document should be addressed to: David Stout, RMP/EIS Team Leader, Bureau of Land Management, Roswell District Office, 1717 West 2nd Street, Roswell, New Mexico, 88201–2019, telephone: 505–627–0272. Copies of the combined RMP/EIS and RMPA/EIS are available at the Roswell District Office (address immediately above), the Roswell Resource Area Office, 500 North Richardson Avenue, Roswell, New Mexico, 88201, and the Carlsbad Resource Area Office, 620 East Greene, Carlsbad, New Mexico, 88220.

FOR FURTHER INFORMATION CONTACT: David Stout, RMP/EIS Team Leader, at the address listed above.

SUPPLEMENTARY INFORMATION: Five alternative management options have been proposed and analyzed in detail in the document. Alternative A is the continuation of current management and is also the "No Action" alternative. Alternative B emphasizes environmental values, while Alternative C emphasizes production and development. Alternative D attempts to balance use and development of resources while maintaining or improving important environmental values. The BLM's preferred alternative, identified in the RMP/EIS and RMPA/EIS as Alternative E, is a combination of portions of the other four alternatives, plus management that is common to all alternatives.

For the Roswell Resource Area, any of the alternatives could be chosen as the proposed management for the Resource Area and would provide for realistic, comprehensive management of the public lands. For the Carlsbad Resource Area, any of the alternatives could be chosen and would provide for realistic management of oil and gas resources on the public lands. However, in an effort to standardize the management of oil and gas resources between the two Resource Areas and to provide improved customer service, each alternative in the Carlsbad RMPA/EIS corresponds with a similar alternative for oil and gas management in the Roswell RMP/EIS. Management proposed for each Resource Area under a specific alternative is essentially the same. Thus, for oil and gas management, the alternatives are essentially Roswell District alternatives. Because of the tie between the two Resource Areas, the alternative selected for the management of oil and gas resources in the Carlsbad Resource Area will be the same alternative selected for oil and gas management in the Roswell Resource Area.

Areas of Critical Environmental Concern: The Roswell RMP/EIS evaluates the proposed designation of five areas of critical environmental concern (ACEC). The proposed ACECs total 61,629 acres. This acreage represents a total acreage based on the presence of resources and opportunities for efficient management. The total acreage figure includes 9,227 acres of private land and 4,680 acres of state land. The designation of an ACEC would pertain to the surface and mineral estate managed by the BLM and to the BLM-administered federal mineral estate under private or state lands. Private or state inholdings within the boundaries of the proposed ACECs would not be designated as part of an ACEC, nor would the management proposed for an ACEC be applied to those lands. The inholdings would be acquired, however, if opportunities for acquisition arise. If inholdings in an ACEC are acquired, they would be included in the ACEC without conducting additional land use planning, and would be managed according to the management in place for the ACEC.

The management emphasis for each proposed ACEC under the preferred alternative is described below. Also listed are brief descriptors of significant uses of the public lands within the proposed ACECs that may be emphasized, limited, or otherwise affected. These descriptors or topics are: A—oil and gas; B—salable minerals; C—leasable minerals; D—locatable minerals; E—rights-of-way; F—land tenure adjustment; G—livestock grazing; H—vegetation management; I—off-highway vehicle use; J—recreation use and development; and, K—riparian management.

Management of the proposed Overflow Wetlands ACEC (6,814 acres) emphasizes the protection of the biological and scenic values of the area, including critical habitat for threatened or endangered fish and significant riparian/wetland values. Topics of

significant management emphasis are A; B; C; D; E; F; G; H; I; J; and, K.

Management of the proposed North Pecos River ACEC (6,400 acres) emphasizes the protection of the biological and scenic values of the area, including critical habitat for threatened or endangered fish and significant riparian/wetland values. Topics of significant management emphasis are: A; B; C; D; E; F; G; H; I; and, K.

Management of the proposed Mescalero Sands ACEC (10,007 acres) emphasizes the protection of the biological, archeological and scenic values of the area with emphasis on a portion of the shinnery oak-dune plant community to enhance the biodiversity of the ecosystem. Topics of significant management emphasis are: A; B; C; D; E; F; G; and, I.

Management of the proposed Fort Stanton ACEC (24,630 acres) emphasizes the protection of the biological, archeological and scenic values of the area, while providing for quality recreation opportunity. Topics of significant management emphasis are: A; C; D; E; F; G; H; I; J; and, K.

Management of the proposed Roswell Cave Complex ACEC (16,818 acres) emphasizes the protection of the natural and scenic values of caves, while allowing for limited recreational, commercial, scientific and educational use. Topics of significant management emphasis are: A; C; D; E; F; G; I; and, J.

Copies of the combined Roswell RMP/EIS and Carlsbad RMPA/EIS are available at the Roswell District Office, the Roswell Resource Area Office, and the Carlsbad Resource Area Office, at the addresses listed above.

Dated: October 25, 1994.

Leslie M. Cone,

District Manager.

[FR Doc. 94–26985 Filed 10–31–94; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Proposed Hilltown Property Development, Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Coleman-Prewitt Investments (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned Permit Number PRT–791946. The requested permit, which is for a period not to exceed 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of a residential development on 51 acres, in Austin, Travis County, Texas. The proposed development will permanently impact about 100 acres of occupied and/or potential endangered species habitat.

The Service has prepared an Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of the publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and EA/HCP should be received on or before December 1, 1994.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Robert B. Simpson, Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection, by written request and by appointment only, during normal business hours (8:00 to 4:00) at the Southwest Regional Office, Division of Endangered Species/Permits, U.S. Fish and Wildlife Service, Albuquerque, New Mexico, or the Ecological Services Field Office (9:00 to 4:30), U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESS** above). Please refer to Permit Number PRT–791946 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Robert B. Simpson at the above Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Applicant plans to build a residential subdivision 7.5 miles northwest of downtown Austin, Travis County, Texas. An EA/HCP has been developed as mitigation for the incidental taking of the golden-cheeked warbler. The Applicant proposes to mitigate the incidental take via dedicating 60 acres of occupied golden-cheeked warbler habitat as a permanent preserve, providing funding for the operation and management of the preserve lands, performing golden-cheeked warbler monitoring and research studies on the project lands, and avoiding construction activities within warbler territories during the breeding season. Details of the mitigation are provided in the EA/HCP for the Hilltown Property Development. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). The Applicant considered three alternatives but rejected two of them because they were not economically viable.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 94–26980 Filed 10–31–94; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Proposed Wallace Tract Subdivision Development, Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Highway 71 Properties (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The Applicant has been assigned Permit Number PRT–782991. The requested permit, which is for a period not to exceed 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and operation of a residential development on 73.3 acres in Austin, Travis County, Texas.

The Service has prepared an Environmental Assessment/Habitat

Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and/or EA/HCP should be received on or before December 1, 1994.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Alma Barrera, Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:00) at the Southwest Regional Office, Division of Endangered Species/Permits, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, or the Ecological Services Field Office (9 to 4:30), U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Written data or comments concerning the application and/or EA/HCP should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to Permit Number PRT–782991 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Alma Barrera at the above Austin Ecological Services Field Office address.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations government permits for endangered species at 50 CFR 17.22.

The Applicant plans to build a residential subdivision located approximately 11.5 miles southwest of Austin, Travis County, Texas. An Environmental Assessment/Habitat Conservation Plan has been prepared for the construction of the 73.3 acre residential subdivision. As mitigation for the incidental taking of the golden-cheeked warbler, the Applicant proposes to preserve approximately 9.5 acres of open space as conservation and greenbelt easement, acquire and donate 14 acres of preserve lands, provide operating and maintenance funds for preserved lands, minimize impacts to warbler habitat, avoid direct impacts during breeding/nesting season, seek ecologically sensitive chemical alternatives, preservation of undeveloped areas, and environmental monitoring.

The Applicant considered five alternatives but rejected four of them because they were not economically viable.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 94–26979 Filed 10–31–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 22, 1994. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by November 16, 1994.

Antoinette J. Lee,

Acting, Chief of Registration, National Register.

ARKANSAS

Benton County

Siloam Springs Dowtown Historic District (Benton County MRA), Roughly bounded by Sager Cr., Ashley St., Madison Ave. and Twin Springs St., Siloam Springs, 94001338

Howard County

Garrett Whiteside Hall, Jct. of N. Third Ave. and Lockesburg St., SW corner, Nashville, 94001340

Ouachita County

Tyson Family Commercial Building, 151 Adams St., SE., Camden, 94001339

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Manhattan Laundry, 1326–1346 Florida Ave., NW., Washington, 94001327

KENTUCKY

Washington County

Brown, Stephen Cooke, House (Washington County MRA), KY 438, Springfield vicinity, 88003471

MARYLAND

Charles County

Mount Aventine, 1.8 mi. SW of Bryans Rd. on Chapman's Landing Rd., NW side, Bryans Road vicinity, 94001328

MISSISSIPPI

Hinds County

Bellevue Court Apartments, 950 North St., Jackson, 94001336

NEW YORK

Cayuga County

Schines Auburn Theatre, 12–14 South St., Auburn, 94001333

Monroe County

Whalen, Harvey, House, 140 Whalen Rd., Penfield, 94001342

Orleans County

North Main—Bank Streets Historic District, Roughly, along N. Main, E. Bank, W. Bank and Liberty Sts., Albion, 94001341

TENNESSEE

Sequatchie County

Dunlap Community Building, Jct. of Cherry and Rankin Sts., SE corner, Dunlap, 94001337

TEXAS

Bexar County

Builders Exchange Building, 152 Pecan St., San Antonio, 94001335

VERMONT

Orleans County

Irasburg Town Hall (Historic Government Buildings MPS), Jct. of VT 14 and VT 58, E of Creek Rd., Irasburg, 94001334

WISCONSIN

La Crosse County

Mundstock, Carl August, Farm, US 14/61, N side, E of jct. with WI 35, Shelby, 94001332

Manitowoc County

Island Village Site, Address Restricted, Eaton vicinity, 94001331

Oneida County

Fishers Island, Address Restricted, Minocqua vicinity, 94001329

Tom 2 Site, Address Restricted, Lake Tomahawk vicinity, 94001330

[FR Doc. 94–27007 Filed 10–31–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 151X)]

Norfolk and Western Railway Company—Abandonment Exemption—in Appomattox and Campbell Counties, VA

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.0-mile line of railroad between milepost N–190.2 at Phoebe and milepost N–191.2 at Concord, in Appomattox and Campbell Counties, VA.[1]

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 1, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by November 14, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 21, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 4, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 24, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27000 Filed 10–31–94; 8:45 am]

BILLING CODE 7035–01–P

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of November 30, 1994. Because the verified notice was not filed until October 12, 1994, consummation should not have been proposed to take place prior to December 1, 1994. Applicant's representative has confirmed that the correct consummation date is on or after December 1, 1994.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances: Established Revised 1994 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim notice establishing a 1994 aggregate production quota and request for comments.

SUMMARY: This interim notice establishes a revised 1994 aggregate production quota for morphine, a Schedule II controlled substance, as required under the Controlled Substances Act of 1970.

DATES: This is effective on November 1, 1994. Comments must be submitted on or before December 1, 1994.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

The DEA established initial 1994 aggregate production quotas for controlled substances in Schedules I and II, including morphine, in a **Federal Register** notice published on October 8, 1993 (58 FR 52508). DEA revised some of the aggregate production quotas on June 22, 1994 (59 FR 32223) in accordance with 21 CFR 1303.13. At that time, there were no comments on the aggregate production quota for morphine and therefore it was not revised.

Since publication of the revised 1994 aggregate production quotas, DEA has received information which necessitates an increase in morphine's 1994 aggregate production quota. Because this increase is immediately required to meet the 1994 year-end medical needs of the United States and for reserve

stocks, an interim notice is being published.

Based on a review of 1993 year-end inventories, 1994 manufacturing quotas, 1994 sales, export requirements and other information available to the DEA, the Deputy Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994), hereby establishes the following revised 1994 aggregate production quota for the listed controlled substance, expressed in grams of anhydrous base:

Basic class	Established revised 1994 quota
Morphine	7,800,000

All interested persons are invited to submit their comments in writing regarding this interim notice.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: October 25, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–27049 Filed 10–31–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

October 26, 1994.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills (202) 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10102, Washington, DC 20503 (202) 395–7316).

Type of Review: *Extension*
Agency: Employment and Training Administration
Title: Unemployment Insurance Quality Appraisal
OMB Number: 1205–0181
Agency Number: ETA Handbook No. 365
Frequency: Annually (recordkeeping)
Affected Public: State or local governments
Number of Respondents: 53
Estimated Time Per Respondent: 465 hours
Total Burden Hours: 24,645
Description: The Unemployment Insurance (UI) Service and State Employment Security Agencies (SESAs) utilize UI quality appraisals annually to assess accuracy and timeliness of UI operations. The results help the Employment and Training Administration and the SESAs to determine what operating areas need corrective action plans to meet achievement standards in the States' annual program budget plan (PBP).

Type of Review: *Reinstatement*
Agency: Mine Safety and Health Administration
Title: Certificate of Electrical/Noise Training
OMB Number: 1219–0001
Agency Number: MSHA 5000–1
Frequency: On occasion
Affected Public: Businesses or other for-profit; Small businesses or organizations
Number of Respondents: 6,400
Estimated Time Per Respondent: 0.02 hours
Total Burden Hours: 128
Description: The Mine Safety and Health Administration (MSHA) Form 5000–1, Certificate of Electrical/Noise Training, is required to be used by instructors to report to MSHA for certification those persons who have satisfactorily completed either a coal mine electrical training program or a noise training course.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–27024 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–43–M

Employment and Training Administration

[NAFTA–00172]

American Cyanamid Co., Lederle Laboratories, Pearl River, New York; Notice of Revised Determination on Reopening

On October 24, 1994, the Department, on its own motion, reopened its investigation for workers producing declomycin at the subject facility. The initial investigation resulted in a negative determination on August 5, 1994. The negative determination was published in the **Federal Register** on August 25, 1994 (59 FR 43868).

Updated findings on reopening show that the statutory requirements for a worker group certification have been met.

The investigation revealed that American Cyanamid Company has received the necessary approval by the Federal Drug Administration of a site in Mexico to produce declomycin. Production of declomycin ceased at the Pearl River, New York plant in April 1994, and an important proportion of this production is being shifted from Pearl River to a plant in Mexico.

Workers producing declomycin at the Pearl River plant experienced employment declines as a result of this shift of production. Accordingly, the Department is revising its negative determination for workers engaged in the production of declomycin at the Pearl River, New York plant of American Cyanamid Company, Lederle Laboratories.

Conclusion

After careful consideration of the new facts obtained on reopening, it is

concluded that there was a shift of production from the Pearl River, New York plant to Mexico of articles that are like or directly competitive with the declomycin produced by the subject plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of declomycin at the Pearl River, New York plant of American Cyanamid Company, Lederle Laboratories who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 25th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27025 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,070; Kasmark & Marshall, Inc., Luzerne, PA

TA–W–30,147; Gordon Country Farm, Bryan Foods Div., Calhoun, GA

TA–W–30,333; The HF Butler Corp., Piscataway, NJ

TA–W–30,216; AEG Transportation System, Inc., Pittsburgh, PA

TA–W–30,127; RMI Titanium Co., Niles, OH

TA–W–30,225; Oshkosh Truck Corp., Oshkosh, WI

TA–W–30,133; Tunnelton Mining Co., Uniontown, PA

TA–W–30,164; The American Press, Cuttently, American Graphics, & Printing, Inc., Utica, NY

TA–W–30,148; Moore Business Forms, Buckhannon, WV

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,110; Texaco Chemical Co., Cuttently, Huntsman Corp., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,222; Easton Corp., Westinghouse & Cutler Hammer Products, Kenosha, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,085; Tenneco Gas Pipeline Co., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,279; Oklahoma Gas & Electric, Red Rock, OK

The Department found that aggregate imports of products like or directly competitive with electricity manufactured at Oklahoma Gas & Electric, Red Rock, OK were insignificant during the period under investigation.

TA–W–30,150; Heekin Can, Inc., Augusta, WI

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–30,286; Dana Corp., Publo, CO

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–30,184; Markwest Siloam Plant, South Shore, KY

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,334; Bodard & Hale Drilling Co., Shawnee, OK

A certification was issued covering all workers separated on or after September 2, 1993.

TA–W–30,246; Century Mills, Wilmington, NC

A certification was issued covering all workers separated on or after August 24, 1993.

TA–W–30,244; Leggett & Platt, Inc., Fashion Bed Group, Chicago, IL

A certification was issued covering all workers separated on or after July 8, 1993.

TA–W–29,961; Peabody Coal Co., Eagle #2 Mine, Shawneetown, IL

A certification was issued covering all workers separated on or after May 30, 1993.

TA–W–30,242; Moss, Inc., Camden, ME

A certification was issued covering all workers separated on or after August 2, 1993.

TA–W–30,166 Vought Aircraft Co., Dallas, TX, Job Families 7500 thru 7510

A certification was issued covering all workers separated on or after July 6, 1993.

TA–W–30,167; Vought Aircraft Co., Dallas, TX, Job Families 7350, 7351, 7352, 7380

A certification was issued covering all workers separated on or after July 13, 1993.

TA–W–30,202; Vought Aircraft Co., Dallas, TX, Job Families 7140, 7143, 7260, 7210, 7230, 7154, 7170

A certification was issued covering all workers separated on or after July 27, 1993.

TA–W–29,951; Saft Aerospace Batteries, Gainesville, FL

A certification was issued covering all workers separated on or after January 1, 1994.

TA-W-30,249; Vought Aircraft Co., Dallas, TX, Job Families 7441, 7430, 2080, 2090, 2110, 7491, 7492, 7442, 7431, 7340, 7700, 7710, 7720, 7730, 7750, 7752, 7760, 7770, 7771, 7780, 7790, 7800, 7820, 7830, 7840, 7860, 7870

A certification was issued covering all workers separated on or after August 10, 1993.

TA-W-29,895; Keytronic, Las Cruces, NM

A certification was issued covering all workers separated on or after May 7, 1993.

TA-W-30,069; Smartscan, Inc., Boulder, CO

A certification was issued covering all workers separated on or after June 16, 1993.

TA-W-30,080; Double B Drilling Corp., Kingfisher, OK

A certification was issued covering all workers separated on or after June 30, 1993.

TA-W-29,956; Anchor Drilling Fluids USA, Inc., Sidney, MT

A certification was issued covering all workers separated on or after May 6, 1993.

TA-W-30,239; Catoosa Knitting Mills, Inc., Crossville, TN

A certification was issued covering all workers separated on or after August 8, 1993.

TA-W-30,009; Santa Fe Energy Resources, Inc., Houston, TX With Other Operations in the Following States: A; CA, B; LA, C; MT, D; NM, E; OK, F; TX, G; WY

A certification was issued covering all workers separated on or after June 10, 1993.

TA-W-30,355; Cardinal Drilling, Billings, MT

A certification was issued covering all workers separated on or after September 2, 1993.

TA-W-30,200; Larson Shingle Co., Forks, WA

A certification was issued covering all workers separated on or after August 1, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of October 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(c) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00229; The American Press, Currently, American Graphics & Printing, Inc., Utica, NY

The investigation revealed that criteria (3) and criteria (4) were not met. A survey of major customers of The American Press revealed that these customers did not import printed materials from Canada or Mexico in 1992, 1993 or during the first three quarters of 1994. There was no shift in production from the workers' firm to Mexico or Canada.

NAFTA-TAA-00228; Lierg, Inc., Missoula, MT

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services did not constitute production of an article as required by the Trade Act of 1974.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00225; Champion International Corp., Forest Products Division, Klickitat, WA

A certification was issued covering all workers of the Forest Products Div. of Champion International Corp., Klickitat, WA separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of October, 1994. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 24, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-27023 Filed 10-31-94; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration, McDonnell Douglas Corp.; Tulsa, Oklahoma

[TA-W-29,945]

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA-W-29,945 which was published in the **Federal Register** on June 24, 1994 (59 FR 32717) in FR Document 94-15413. This revises the date received and the date of petition as they appear in the 15th line of the third and fourth columns, in the appendix table on page 32717. Both dates should read "March 28, 1994" on the 15th line of the third and fourth columns.

Signed in Washington, D.C., this 25th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-27028 Filed 10-31-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,945]

McDonnell Douglas Corp. Tulsa, Oklahoma; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for Worker Adjustment Assistance on September 15, 1994, applicable to all workers of the subject firm. The notice was published in the

Federal Register on October 4, 1994 (59 FR 50629).

At the request of the workers the Department reviewed the subject certification. The findings show that worker separations occurred just prior to the May 20, 1994 impact date.

In amending the May 20, 1993 impact date in the subject certification, the Department is setting the new impact date of March 28, 1993, one year prior to the petition date of March 28, 1994 petition.

The intent of the Department's certification is to include all workers of McDonnell Douglas who were adversely affected by increased imports.

The amended notice applicable to TA–W–29,945 is hereby issued as follows:

All workers of McDonnell Douglas Corporation, Tulsa, Oklahoma engaged in employment related to the production of military and commercial aerospace parts and subassemblies who became totally or partially separated from employment on or after March 28, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27026 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 14, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 14, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Morrison Berkshire, Inc (Wkrs)	North Adams, MA	10/17/94	10/06/94	30,400	Textile Machinery.
Miller Group, Inc (Wkrs)	Schuylkill Haven, PA.	10/17/94	10/04/94	30,401	Bleached or Dyed Textiles.
Rosa Fashions, Inc (ILGWU)	Hoboken, NJ	10/17/94	10/06/94	30,402	Ladies' Coats.
Noltina Crucible & Refractory (Wkrs).	Philadelphia, PA	10/17/94	09/30/94	30,403	Clay Graphite Crucibles.
Nahama & Weagant Energy (Wkrs).	Bakersfield, CA	10/17/94	10/04/94	30,404	Oil and Gas.
McDonnell Douglas (IAMAW)	Edwards, CA	10/17/94	10/05/94	30,405	Commercial Transport Aircraft.
Lockheed Fort Worth Co (Co)	Klamath Falls, OR	10/17/94	10/03/94	30,406	Trainers & Spares for Aircraft Sup.
John H. Harland Co (Wkrs)	El Paso, TX	10/17/94	05/10/94	30,407	Check Printers, Computers, Vouchers, etc.
Karen Mfg (ILGWU)	Sweet Valley, PA	10/17/94	08/31/94	30,408	Ladies' Dresses.
Spartan Undies/Imerman (Wkrs)	New York, NY	10/17/94	10/03/94	30,409	Office Workers Sample, Sales, Clerical.
Hoechst Celanese Corp (Co)	Coventry, RI	10/17/94	10/04/94	30,410	Dyes, Pigments, Fine Chemicals, etc.
Harmon Automotive (Wkrs)	Sevierville, TN	10/17/94	10/04/94	30,411	Rearview Mirrors & Seatbelt Assemblies.
Dexter Automotive (Wkrs)	West Unity, OH	10/17/94	10/05/94	30,412	Automobile Acoustical Products.
A.P. Green Industries (Wkrs)	Hitchins, KY	10/17/94	10/04/94	30,413	Refractory Bricks.
Texaco Refining & Marketing, Inc (Wrkrs).	Tulsa, OK	10/17/94	10/09/94	30,414	Crude Oil & Natural Gas.
Enron Exploration Co/Enron Oil (Wkrs).	Houston, TX	10/17/94	10/03/94	30,415	Oil and Gas.

[TA–W–29,856]

VOUGHT AIRCRAFT Co.; A/K/A/ LTV Aerospace & Defense Co., Dallas Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on August 26, 1994 and published in the Federal Register on October 4, 1994 (59 FR 50625).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that some of the claimants' wages were reported under an unemployment insurance (UI) tax account for LTV Aerospace & Defense Company in Dallas, Texas. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,856 is hereby issued as follows:

All workers of Job Family 2060 Department engaged in employment related to the production of aircraft components at Vought Aircraft Company, also known as (a/k/a) LTV Aerospace and Defense Company, Dallas, Texas who became totally or partially separated from employment on or after April 19, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27027 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,157]

Hoechst Celanese, Somerville, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 1, 1994 in response to a worker petition which was filed on July 12, 1994 on behalf of workers at Hoechst Celanese, Somerville, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 25th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27029 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–76; Exemption Application No. D–9676, et al.]

Grant of Individual Exemptions; L.H. Chapman Investment Company Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847 August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

L.H. Chapman Investment Company Pension Plan (the Plan); Located in Columbus, Ohio

[Prohibited Transaction Exemption 94–76; Application No. D–9676]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase (the Purchase) by Margaret Chapman, Loyal Chapman, and Lou Chapman Koester's individually-directed accounts (the Accounts) in the Plan from Indianapolis Life Insurance Company and Columbus Mutual Life Insurance Company of certain undivided interests (the Interests) in certain promissory notes (the Notes) of which the obligor is L.H. Chapman Investment Company, a party in interest with respect to the Plan.

This exemption is conditioned on the following requirements: (1) The terms of the Purchase are at least as favorable to the Accounts as those obtainable in an arm's length transaction with an unrelated party; (2) the Purchase price is equal to the Accounts' pro rata share of the aggregate outstanding principal balances of the Notes on the day of the Purchase; (3) the Purchase occurs only if such outstanding principal balances are not greater than the fair market values of the Interests on the day of the Purchase as determined by an independent, qualified appraiser; (4) the Purchase does not involve more than twenty-five percent of the assets in each of the Accounts; and (5) the Accounts are not required to pay any fees, commissions or expenses in connection with the Purchase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 19, 1994 at 59 FR 47951.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

BMJ Financial Corp. Deferred Savings Plan (the Plan); Located in Bordentown, New Jersey

[Prohibited Transaction Exemption 94–77; Exemption Application No. D–9732]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the past acquisition of certain stock rights (the Rights) by the Plan pursuant to a stock rights offering (the Offering) by BMJ Financial Corporation (BMJ) to shareholders of record as of February 9, 1993 of BMJ common stock (the Common Stock); (2) the holding of the Rights by the Plan during the subscription period of the Offering; and (3) the past exercise of the Rights by the Plan; provided that the following conditions are satisfied:

(1) The Plan's acquisition and holding of the Rights occurred in connection

with the Offering made available to all shareholders of the Common Stock;

(2) The Plan's acquisition and holding of the Rights resulted from an independent act of BMJ as a corporate entity, and all holders of Common Stock, including the Plan, were treated in the same manner with respect to the Offering; and

(3) The authority for all decisions regarding the acquisition, holding and control of the Rights by the Plan was exercised by an independent fiduciary which made determinations as to whether and how the Plan should exercise or sell the Rights acquired through the Offering.

EFFECTIVE DATE: This exemption is effective as of February 9, 1993, the Record Date of the Offering.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 2, 1994 at 59 FR 45721.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 27th day of October, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–27055 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9718 & D–9719, et al.]

Proposed Exemptions; Wells Fargo Bank, N.A. (Wells Fargo) and Wells Fargo Institutional Trust Company, N.A. (WFITC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Wells Fargo Bank, N.A. (Wells Fargo) and Wells Fargo Institutional Trust Company, N.A. (WFITC); Located in San Francisco, California

[Application Nos. D–9718 and D–9719]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the lending of securities that are assets of an employee benefit plan for which Wells Fargo, WFITC or an affiliated company (the Applicants) are fiduciaries, provided that the following conditions are met:

(A) The securities are loaned to a broker-dealer which is registered under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government Securities (as defined in section 3(a)(12) of the 1934 Act) or to a bank (A Borrower);

(B) Neither the Borrower nor an affiliate of the Borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(C) The lending plan receives from the Borrower (either by physical delivery or by book entry in a securities depository) by the close of the lending fiduciary's business on the day in which the securities lent are delivered to the Borrower, collateral (the Collateral) consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than the Borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding day, a market value or, in the case of letters of credit a stated amount, equal to not less than 102% of the then market value of the securities lent;

(D) Prior to the loan of any securities, the Borrower furnishes the Applicants with the most recent available audited statements of the Borrower's financial condition and a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statements furnished to the plan, that has not been disclosed to the Applicants;

(E) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the lending plan as an arm's length transaction with an unrelated party would be. Such agreement may be in the form of a master agreement covering a series of securities lending transactions;

(F) (1) The lending plan (a) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to the Borrower, if such fee is not greater than the plan would pay in a comparable transaction with an unrelated party;

(2) The plan receives the equivalent of all distributions made on or with respect to the loaned securities during the term of the loan;

(G) If the market value of the Collateral at the close of trading on a business day is less than 102% of the market value of the borrowed securities at the close of trading on that day, the Borrower shall deliver, by the close of business on the following business day, an additional amount of Collateral (as described in paragraph C) the market value of which, together with the market value of all previously delivered Collateral, equals at least 102% of the market value of all the borrowed securities as of such preceding day;

(H) The trustee of such fund or account may terminate the loan of securities at any time. In the event of termination, the Borrower shall deliver Replacement Securities, as defined below, to the trustee of the lending plan. The Borrower shall deliver Replacement Securities that are equivalent in value to the loaned securities within five business days of notice of termination by the trustee. For purposes of this exemption, the term "Replacement Securities" means securities that: (a) Are issued by the same agency as the loaned securities, (b) have the same coupon as the loaned securities, (c) have a principal amount at least equal to but no more than 2% greater than the then current principal amount of the loaned securities, (d) are of the same program or class as the loaned securities, and (e) either (i) have an aggregate weighted average maturity within a 12-month variance of the then current aggregate weighted average maturity of the loaned securities, but in no case will the variance be more than 10% of such aggregate weighted average maturity of the loaned securities, or (ii) meet some other comparable objective standard containing a range of variance that is no greater than that described in (i) above and that assures that the aging of the loaned securities is properly taken into account.

If the Borrower fails to return the Replacement Securities, the trustee may apply the Collateral to purchase other Replacement Securities and to pay other expenses associated with the purchase. In addition, the Borrower is obligated to pay the amount of any remaining obligations and expenses not covered by the Collateral plus interest at a reasonable rate.

For purposes of this exemption the term "affiliate" of another person shall include: (a) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (b) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (c) Any corporation or partnership of which such other person is an officer, director, partner. For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

EFFECTIVE DATE: This exemption, if granted, will be effective May 27, 1994.

Summary of Facts and Representations

1. Wells Fargo is the tenth largest commercial bank in the United States as measured by assets held on June 30, 1993. Wells Fargo serves as trustee for many employee benefit plans, many of which invest in certain of its collective investment funds. WFITC is a trust company owned 99.9% by Wells Fargo Nikko Investment Advisors (WFNIA). WFNIA is a general partnership owned 50% by a wholly owned subsidiary of Wells Fargo and 50% by a subsidiary of The Nikko Securities Co., Ltd., a Japanese securities firm. Like Wells Fargo, WFITC serves as a fiduciary for employee benefit plans, many of which invest in certain of its collective investment funds. (The plans for which Wells Fargo, WFITC or an affiliated company serves as a fiduciary shall be collectively referred to as the Plans.)

2. WFITC currently maintains the Mortgage-Backed Securities Index Fund (the Fund), a collective investment fund maintained pursuant to the regulations of the U.S. Comptroller of the Currency. The Fund owns as part of its investment portfolio, pass-through certificates issued by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC) (collectively, the Agency Securities).

3. The Applicants seek an exemption to permit Wells Fargo, WFITC and any affiliated companies to lend these Agency Securities on behalf of the

Plans.[1] The Applicants represent that the proposed securities lending transactions would comply in all respects with the provisions of Prohibited Transaction Exemption (PTE) 81–6[2] (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) except that, under the Applicants' proposed lending program, the Replacement Securities that will be returned by the Borrower will not necessarily be identical to the loaned securities but must have substantially identical generic criteria to the loaned securities. In this regard, the Applicants represent that upon termination of the loan, the Borrower is required to deliver Agency Securities that (a) are issued by the same issuer as the loaned Agency Securities, (b) have the same coupon as the loaned Agency Securities, (c) have a principal amount equal to at least 100% of the then current principal amount of the loaned Agency Securities and no greater than 102% of such amount, (d) are of the same program or class as the loaned Agency Securities, and (e) either (i) have an aggregate weighted average maturity within a 12-month variance of the then current aggregate weighted average maturity of the loaned Agency Securities, but in no case will the variance be more than 10% of such aggregate weighted average maturity of the loaned Agency Securities, or (ii) meet some other comparable objective standard containing a range of variance that is no greater than that described in (i) above and that assures that the aging of the loaned Agency Securities is properly taken into account.[3] The applicants represent that notification that the Replacement Securities will not be identical in all respects to the loaned Agency Securities has been provided to all current Plans and will be provided to any new Plans.

4. The Applicants represent that the proposed transactions would be beneficial to the Plans because the lending of Agency Securities increases the investment return for Plans participating in the lending program without increasing the Plans' level of risk. In addition, the Applicants represent that the fees for the securities lending that are paid by the Borrowers or the proceeds from investing cash collateral supplement the interest, dividends, or other distributions paid on those securities. The Applicants assert that the same protections afforded to plans relying on PTE 81–6 will be present for the participants and beneficiaries of any Plans engaging in the described transactions.

5. In summary, the Applicants represent that the proposed transactions will satisfy the criteria of section 408(a) of the Act because: (a) All the conditions specified in PTE 81–6 for the protection of plans engaging in transactions in reliance on that class exemption will be met with regard to the transactions proposed in the application; (b) a specific set of criteria will ensure that the securities returned to a Plan upon termination of a loan are, in fact, substantially identical to the loaned securities in accordance with the PSA guidelines for generic trading of Agency Securities; (c) no securities will be loaned to any entity which is a Plan fiduciary with respect to such securities; (d) the Plans participating in the lending program will receive an enhanced return over the level that they would have enjoyed had the securities simply been held; and (e) the Collateral will be at least 102% of the market value of the loaned securities (plus interest) and will be monitored daily by the Applicants.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

[1] The exemption would cover the lending of Agency Securities held in the Fund or in any other fiduciary account for which Wells Fargo, WFITC or any affiliated company serves as a fiduciary.

[2] PTE 81–6 is a class exemption that permits, under certain conditions, the lending of securities that are assets of employee benefit plans to banks and certain broker-dealers which are parties in interest with respect to such plans. The class exemption requires, among other conditions, that upon termination of the loan, the borrower must deliver to the lending plan certificates for securities identical to the borrowed securities.

[3] The Applicants represent that Agency Securities are primarily traded on a generic basis. In other words, the purchaser places an order to acquire Agency Securities by specifying certain generic criteria and receives specific Agency Securities that satisfy the generic criteria in accordance with the Public Securities Association Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities (the PSA Guidelines). The PSA Guidelines provide for delivery of an Agency Security that has the same issuer (i.e., GNMA, FNMA, or FHLMC), the same coupon, the same program or class of mortgage pools (e.g., 15 year, 30 year or 5 year balloon) as the traded Agency Security so long as the principal amount of the delivered Agency Security is no less than 98% of the principal amount of the traded Agency Security and no greater than 102% of such amount. The Applicants represent that over 95% of the Agency Securities traded in the market are effected using this generic trading method and that it would be extremely difficult to establish a lending program that did not operate on a generic trading basis. The Applicants represent that the criteria for the Replacement Securities will at all times be at least as restrictive as the PSA Guidelines in effect as of the date of the loan.

The Lubrizol Corporation Employees' Stock Purchase and Savings Plan (the Plan); Located in Wickliffe, Ohio

[Application No. D–9770]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan to the Lubrizol Corporation (Lubrizol), the Plan sponsor and a party in interest with respect to the Plan, of the Plan's interest (the Interest) in certain securities (the Securities) issued by Columbia Gas Systems, Inc. (CGS), provided: (a) No commissions or other expenses are paid by the Plan in connection with the sale; (b) the Plan will receive the greater of $227,158.01 or the fair market value of the Plan's Interest in the Securities at the time of the sale as determined by Bankers Trust Company (BTC), the Plan's independent fiduciary; and (c) BTC has determined that the proposed transaction is appropriate for the Plan and in the best interest of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. Lubrizol is a leading full-service supplier of performance chemicals to diverse markets worldwide. The Plan is a defined contribution plan with 2,521 participants. As of May 31, 1994, the Plan had assets with an approximate aggregate fair market value of $67,061,827.

2. BTC, a New York banking corporation headquartered in New York City, served as trustee of the Plan from April 1, 1986 until October 1, 1992. In June, 1991, BTC held in one of its collective investment funds the Securities, which consisted of: a) CGS Discount Note with a maturity date of 8/5/91, acquired 5/9/91, with an interest rate of 6.28%; b) CGS Discount Note with a maturity date of 8/7/91, acquired 5/9/91, with an interest rate of 7.04%, and c) CGS Loan Participation due 6/20/91, acquired 2/22/91, with an interest rate of 6.9%. The Plan's original investment for its Interest in the Securities was $181,617.47. BTC remains the Plan's independent trustee with respect to the Securities.

3. In June, 1991, CGS made a surprise announcement of financial difficulties. CGS suspended its dividend and announced that it faced potential charges to income exceeding $1 billion due to adverse prices under long-term contracts to purchase natural gas. CGS pursued a renegotiation of the gas purchase contracts of its subsidiary Columbia Gas Transmission Corp. and certain of its bank credit lines. As part of its efforts to renegotiate such gas contracts and credit lines, CGS threatened to file for bankruptcy and failed to pay interest and principal on its short-term debt obligations. CGS's commercial paper and term debt were downgraded on June 19, 1991 from A2 to B1 and subsequently further downgraded to D on June 21, 1991. CGS ultimately filed for protection under Chapter 11 of the Bankruptcy Code on July 31, 1991.

4. Because the Securities remain frozen by the Bankruptcy Court with no clear indication as to when CGS will emerge from Chapter 11, Lubrizol has offered to purchase the Plan's Interest in the Securities from the Plan for cash. The Plan will pay no commissions or expenses in connection with the transaction. BTC has determined that the Plan's Interest in the Securities had a fair market value of $227,158.01 as of May 31, 1994. The purchase price for the Interest will be the greater of $227,158.01 or the fair market value of the Interest as of the time of the sale as determined by BTC.[4] BTC represents that it values the Securities on a monthly basis, and the Securities would be valued for purposes of this transaction in accordance with the following formula: BTC receives the Average Monthly Commercial Paper Rate from Merrill Lynch which is used to calculate a projected Weighted Average Yield. This Weighted Average Yield is then used to calculate the projected price for each of the Securities. BTC represents that as of the date the Securities became frozen, June 30, 1991, the Plan's Interest in the Securities was $200,000. CGS has not been accruing interest past the maturity dates of the Securities. However, BTC believes that once CGS emerges from bankruptcy, it will pay post-bankruptcy petition interest to the date of emergence. BTC uses the above-described formula to estimate this post-maturity interest in its monthly calculation of the value of the Securities.

5. BTC represents that because there is not a regular market for the CGS notes and the CGS loan participation does not trade in the market, BTC believes that it will be in the best interest of the Plan for Lubrizol to purchase the Plan's Interest in the Securities at a price determined in accordance with the formula described in rep. 4, above. BTC represents that Lubrizol's acquisition of the Plan's Interest in the Securities at this time would remove an illiquid asset from the Plan and allow for further investment of Plan assets.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: a) the sale would be a one-time transaction for cash, and no commissions or other expenses would be paid by the Plan in connection with the transaction; b) the sales price would be determined by BTC, the Plan's independent fiduciary with respect to the Securities; and c) BTC has determined that the proposed transaction is appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 27th day of October, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–27056 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–29–P

[4] Lubrizol represents that should the Plan receive greater than the fair market value of the Securities, the excess, if treated as a contribution to the Plan, would not cause the Plan to violate sections 401(a)(4), 404 or 415 of the Code.

LEGAL SERVICES CORPORATION

Grant Award for Legal Services State Support in Puerto Rico

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grant.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a one-time, nonrecurring grant to the Puerto Rico Legal Services (PRLS) for the purpose of

planning for state support activities in its service area. The Corporation plans to award a grant in the amount of $25,000.

The one-time grant will be awarded pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this 30-day period.

DATES: All comments and recommendations must be received by 5 pm on or before November 30, 1994.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Office of Program Services, (202) 336–8825.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. PRLS is a recipient of LSC funding for the provision of direct legal services to this service area. The amount of the 1994 state support planning grant is consistent with the 1994 LSC Appropriations Act.

Dated: October 27, 1994.

Leslie Q. Russell,

Assistant to the Director, Office of Program Services.

[FR Doc. 94–27065 Filed 10–31–94; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL SCIENCE BOARD

Nominations for Membership

The National Science Board (NSB) is the policymaking body of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director *ex officio*.

Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: "The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation."

All of the members whose terms expire in May 1996 are eligible for reappointment. Current NSB membership is as follows:

Terms Expire May 10, 1996

Dr. Perry L. Adkisson, Regents Professor, Department of Entomology, Texas A&M University, College Station, TX

Dr. Bernard F. Burke, William A. M. Burden Professor of Astrophysics, Massachusetts Institute of Technology, Cambridge, MA

Dr. Thomas B. Day, President, San Diego State University, 5300 Campanile Drive, San Diego, CA

Dr. James J. Duderstadt, President, The University of Michigan, 2074 Fleming Administration Building, Ann Arbor, MI

Dr. Marye Anne Fox (Vice Chairman, National Science Board), M. June and J. Virgil Waggoner Regents Chair in Chemistry, Department of Chemistry, University of Texas at Austin, Austin, TX

Dr. Phillip A. Griffiths, Director, Institute for Advanced Study, Olden Lane, Princeton, NJ

Mr. Jaime Oaxaca, Vice Chairman, Coronado Communications Corporation, 11340 West Olympic Boulevard, Suite 206, Los Angeles, CA

Dr. Howard E. Simmons, Jr., Central Research & Development, Du Pont Experimental Station, P.O. Box 80328, Wilmington, DE

Terms Expire May 10, 1998

Dr. F. Albert Cotton, W.T. Doherty-Welch Foundation Distinguished Professor of Chemistry and Director, Laboratory for Molecular Structure and Bonding, Texas A&M University, College Station, TX

Dr. Charles E. Hess, Professor and Director of International Programs Office, University of California, Davis, CA

Dr. John E. Hopcroft, Joseph Silbert Dean of Engineering, College of Engineering, Cornell University, Ithaca, NY

Dr. James L. Powell, President, Museum of Natural History, Museum of Los Angeles County, 900 Exposition Boulevard, Los Angeles, CA

Dr. Frank H.T. Rhodes (Chairman, National Science Board), President, Cornell University, Ithaca, NY

Dr. Ian M. Ross, President-Emeritus, AT&T Bell Laboratories, Inc., 101 Crawfords Corner Road, P.O. Box 3030, Holmdel, NJ

Dr. Richard N. Zare, Marguerite Blake Wilbur Professor of Chemistry, Department of Chemistry, Stanford University, 121 Mudd Building, Stanford, CA

Terms Expire May 10, 2000 [1]

Dr. Eve L. Menger, Director, Technical Services & Administration, Corning, Inc., Corning, NY

Dr. Claudia I. Mitchell-Kernan, Vice Chancellor, Academic Affairs and Dean, Graduate Division, Office of the Chancellor, University of California, Los Angeles, CA

Dr. Diana Natalicio, President, The University of Texas at El Paso, El Paso, TX

Dr. Robert M. Solow, Institute Professor Department of Economics, Massachusetts Institute of Technology, Cambridge, MA

Dr. Warren M. Washington, Director, Climate & Global Dynamics Divisions, NCAR, P.O. Box 80307, Boulder, CO

Dr. John A. White, Jr., Dean, College of Engineering, Georgia Institute of Technology, Atlanta, GA

(Two Vacancies)

Member Ex Officio

Dr. Neal F. Lane (Chairman, Executive Committee), Director, National Science Foundation, Washington, DC

The Board and the Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biographical information may be forwarded to the Chairman, National Science Board, 4201 Wilson Boulevard, Arlington, VA, 22230, no later than January 6, 1995.

Any questions should be directed to Mrs. Susan E. Fannoney, Staff Assistant, National Science Board (703/306–2000).

Dated: October 26, 1994.

Frank H. T. Rhodes,

Chairman, National Science Board.

[FR Doc. 94–26914 Filed 10–31–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Second Quarter CY 1994 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires NRC to disseminate information on abnormal occurrences (AOs) (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of

[1] NSB nominee pending U.S. Senate confirmation.

public health and safety). During the second quarter of CY 1994, the following incidents at NRC licensees were determined to be AOs and are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 17, No. 2, ("Report to Congress on Abnormal Occurrences: April–June 1994"). This report will be available at NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20037 about three weeks after the publication date of this **Federal Register** Notice.

Other NRC Licensees

(Industrial Radiographers, Medical Instructions, Industrial Users, etc.)

94–8 Multiple Medical Brachytherapy Misadministrations at Deaconess Medical Center in Billings, Montana

One of the AO reporting guidelines notes that a therapeutic exposure which affects two or more patients at the same facility (regardless of any health effects) can be considered an AO.

This report documents two misadministrations involving brachytherapy procedures performed at the licensee's facility in September and November 1993, which are related to nine other events identified at another NRC-licensed medical facility, because the events are the result of a common root cause.

Date and Place—September and November 1993; Deaconess Medical Center; Billings, Montana.

Nature and Probable Consequences—On March 22, 1994, representatives from Northern Rockies Cancer Center (NRCC), Deaconess Medical Center (DMC), and St. Vincent Hospital and Health Center (SVHHC) notified the NRC Region IV office of a misadministration involving a brachytherapy treatment performed at DMC on September 24, 1993 (Preliminary Notification of Event or Unusual Occurrence PNO–IV–94–010; March 23, 1994; Docket No. 030–02389). The event was not discovered until March 20, 1994, during the course of a thorough review of a select group of treatments performed at DMC and SVHHC under treatment plans developed at NRCC. The three licensees participated in the telephonic notification because NRCC provides brachytherapy planning services to both DMC and SVHHC, and the potential cause of the misadministrations involved errors in treatment plans developed at NRCC. (NRCC is jointly owned by DMC and SVHHC.) The licensees reported that based upon initial information developed by the physics staff at NRCC, it appeared likely that additional brachytherapy treatment errors had occurred at both DMC and SVHHC.

The following day, March 23, 1994, the licensees reported an additional brachytherapy misadministration at DMC, and nine other incidents due to the same error that resulted in administered doses greater than prescribed (one at DMC and eight at SVHHC) (Preliminary Notification of Event or Unusual Occurrence PNO–IV–94–010A; March 24, 1994; Docket No. 030–02389). The misadministrations reported by DMC involved administration of radiation such that the doses received by the patients exceeded the prescribed doses by 21 and 24 percent. In each case, the patient had received radiation by external beam as well as "boost" doses administered via brachytherapy. The overdoses noted above pertain only to the brachytherapy component of each treatment.

During the initial telephonic report, NRCC staff explained that during a recent routine treatment setup a new staff member identified errors in a dose table generated by a Theratronics Theraplan L treatment planning system. Following considerable review of treatment plans and data generated using the treatment planning system, the physics staff at NRCC, with assistance from Theratronics, concluded that the data in a software file used to compute dose tables for cesium-137 (Cs–137) sources were deleted and were later replaced with data which did not properly characterize the Cs–137 sources used by DMC and SVHHC. The computer-generated dose tables that were computed using erroneous data were in error by as much as 20 to 25 percent. The errors were not detected because an incorrect reference dose table was used to verify and adjust the output of the treatment planning algorithm and individual patient treatment plans.

An NRC inspection was conducted at the facility on March 28 through April 1 and April 5 through 29, 1994. In addition, the events were reviewed by regional and headquarters NRC staff accompanied by personnel from the Idaho National Engineering Laboratory on April 6 through 8, 1994, to examine generic aspects of the root causes and contributing factors.

The physics staff at NRCC promptly corrected the data in the Theraplan L software and recalculated the doses received by the patients. Based upon a review of the recalculated doses conducted by the authorized users and an independent medical consultant contracted by NRCC, the authorized users have determined that no long-term adverse health effects beyond those normally expected for this form of treatment are anticipated for the patients. The licensee has been informed that an NRC medical consultant will review each case in order to provide an independent assessment of the potential consequences of the overdoses.

The patients involved in the misadministrations were notified both orally and in writing.

Cause or Causes—The inspection disclosed that the root cause of the misadministrations was a failure to conduct independent (manual) verification checks of treatment plans that were adequate to determine the accuracy of computer-generated dose tables (Letter from Leonard J. Callan, Regional Administrator, NRC Region IV, to Lane Basso, Chief Executive Officer, Deaconess Medical Center, Docket No. 030–02389, License No. 25–01051–01, dated May 26, 1994; and Letter from Samuel J. Collins, Director, Division of Radiation Safety and Safeguards, to Mr. Lane Basso, Chief Executive Officer, Deaconess Medical Center, forwarding NRC Inspection Report 030–02389/94–01, Docket No. 030–02389, License No. 25–01051–01, dated June 10, 1994). Several factors involving clarity of instructions provided in the Theraplan user's manual, and in prompts and data presented to treatment planning system users in printed format and at the system console, were identified as contributing factors to the inadvertent entry of and failure to detect the erroneous data entered in program software for linear Cs–137 sources.

The inspection also disclosed significant weaknesses in DMC's implementation of its quality management program (QMP) for brachytherapy procedures. In addition, several apparent violations of NRC requirements relating to DMC's QMP and its implementation were identified. One apparent violation involved a failure to establish a QMP in January 1992, as required, although the inspection confirmed the DMC later established a QMP in May 1992. However, the QMP established by DMC failed to meet the following requirements: (1) that written directives are signed by authorized users and completed in accordance with NRC regulations; (2) that final plans of treatment are in accordance with the respective written directive; and (3) that each administration of radiation is in accordance with the applicable written directive. Other apparent violations included failures to (1) conduct an annual review of the QMP during the

calendar years 1992 and 1993, (2) train all individuals working under the supervision of DMC's authorized users in the provisions of its QMP, (3) train nursing personnel who cared for patients undergoing brachytherapy treatment in accordance with the conditions of DMC's license, and (4) record all required information in survey records related to brachytherapy and in brachytherapy source usage records.

Actions Taken To Prevent Recurrence

Licensee—DMC voluntarily suspended its brachytherapy program until certain corrective measures could be implemented. However, because the findings of the inspection indicated significant, programmatic weaknesses in DMC's QMP and its implementation, the NRC sought to confirm with DMC staff the specific actions planned for completion prior to resuming brachytherapy treatments. The licensee's proposed corrective actions were documented in a Confirmatory Action Letter (CAL) issued by the NRC on May 3, 1994 (Letter from Leonard, J. Callan, Regional Administrator, NRC Region IV, to Lane Basso, Chief Executive Officer, Deaconess Medical Center forwarding Confirmatory Action Letter, Docket No. 030–02389, License No. 25–01051–01, dated May 3, 1994). As of the date of this report, the licensee has not yet completed each of the actions described in the CAL and has continued suspension of its brachytherapy program.

NRC—An enforcement conference was held with the licensee on June 28, 1994, to discuss the apparent violations described above and to review the corrective actions taken by the licensee. NRC is continuing its deliberations regarding any proposed enforcement action.

An NRC Information Notice has been drafted to inform other licensees of the particulars of this case and of the importance of conducting adequate checks of computer-generated treatment plans. NRC has also discussed concerns related to the Theraplan treatment planning system software, and related instructions provided by the manufacturer, with representatives from the U.S. Food and Drug Administration (FDA). FDA has recently cleared the software for the treatment planning system to allow modifications of existing software to be imported into the United States.

A medical consultant will review each misadministration and provide NRC with an independent assessment of the overdoses and the potential adverse health effects to patients.

* * * * * * *

94–9 Medical Brachytherapy Misadministration at Memorial Hospital in South Bend, Indiana

One of the AO reporting guidelines notes that a therapeutic dose that results in any part of the body receiving unscheduled radiation can be considered an AO.

Date and Place—April 13, 1992; Memorial Hospital; South Bend, Indiana.

Nature and Probable Consequences—On April 13, 1992, the first of two brachytherapy treatments was begun. Each of the treatments was to deliver 15 gray (GY) (1500 rad) to the patient's cervix. For the first treatment, five cesium-137 (Cs–137) sources were to be loaded into a treatment device, known as a Fletcher-suit applicator, which was placed in the patient's vagina. The sources were placed into afterloaders by a dosimetrist in preparation for placement in the applicator. The afterloaders were then placed in the applicator by the treating physician.

About eight hours later, the patient's care provider discovered a Cs–137 source on the floor near the foot of the patient's bed. The source was found after the care provider had changed the patient's bed linen. The care provider recovered the source with long handled forceps and placed it in a shielded container.

The treating physician and the licensee's Radiation Safety Officer (RSO) were notified. They determined that one afterloader in the applicator was empty and that the Cs–137 source had not been placed in the applicator. The source was then placed in the afterloader and loaded into the applicator to continue the patient's treatment.

The first treatment was then completed, giving the patient a dose to the treatment site of 13.83 Gy (1383 rad), which was 8 percent less than the intended dose. The second treatment was then performed on April 27 and 28, 1992, without incident.

The licensee investigated the incident and concluded that the source had fallen on the floor while it was being placed in the afterloading device by the dosimetrist. The incident was not reported to NRC because the radiation dose to the treatment site differed by only 8 percent from the intended dose. This variance would not require reporting as a misadministration.

During an NRC inspection on May 4 and 5, 1994, the inspector reviewed the circumstances surrounding the treatment incident. The inspector evaluated the routine radiation surveys of the patient's room that were done after the radiation sources were placed in the applicator. The surveys showed that it was unlikely that there was an unshielded Cs–137 source on the floor of the room.

Further inquiry by the inspector led to the determination that the source likely fell from the afterloader while it was being placed in the applicator. The physician reported having difficulty in placing the afterloader in the applicator, and, according to the treatment chart, the patient had reported that she felt a small metal object fall next to her skin during the source placement.

As a result, the source may have been next to the skin of the patient's thigh for about 7.5 hours resulting in a radiation dose of up to 10.34 Gy (1034 rad), according to the licensee's calculation.

An NRC medical consultant was retained to evaluate the case and concluded that the radiation dose to the patient's thigh could result in some later damage to the tissue of the patient's thigh.

Because this incident resulted in a radiation dose to the wrong treatment site, this constitutes a misadministration.

The licensee notified the patient and the patient's physician of the misadministration on May 6, 1994. However, the licensee did not provide a written report to the patient until June 27, 1994, after NRC inquired about patient notification.

Cause or Causes—The incident apparently was the result of the source falling out of the afterloader as it was being placed in the applicator. The physician reported some difficulty in placing the sources and apparently did not observe the source when it fell.

Actions Taken To Prevent Recurrence

Licensee—The licensee has revised its procedures for placing the radiation sources, including use of a pillow under a patient's pelvis in difficult situations. Its investigation of any future incidents will also include an evaluation of radiation doses to unintended treatment sites.

NRC—The NRC inspection during May 4 and 5, 1994, identified two violations of NRC requirements. They were (1) failure of the licensee's Radiation Safety Committee and RSO to adequately investigate a possible misadministration to include consideration of possible radiation doses to the wrong treatment sites; and (2) failure to provide a written report to the patient within 15 days of the discovery of a misadministration. A

Notice of Violation (Letter from Roy J. Caniano, Chief, Nuclear Materials Safety Branch, NRC Region III, to George Soper, Senior Vice President, Memorial Hospital, forwarding Notice of Violation and Inspection Report 030–17335/94001, Docket Nos. 030–17335 and 030–191173, License Nos. 13–18881–01 and 13–18881–02, dated July 15, 1994) was issued to the licensee on July 15, 1994. There was no Civil Penalty involved.

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94–10 Teletherapy Misadministration at Jewish Hospital, Washington University Medical Center, in St. Louis, Missouri

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation can be considered as an AO.

Date and Place—April 22, 1994; Jewish Hospital, Washington University Medical Center; St. Louis, Missouri.

Nature and Probable Consequences—A patient was being treated for cancer of the brain. The written prescription directed that a 3000 centigray (cGy) (3000 rad) total absorbed dose be delivered in a series of 10 treatments of 300 cGy (300 rad) each. Each treatment was to consist of 150 cGy (150 rad) from the left side, and 150 cGy (150 rad) from the right side. The eyes were to be shielded during the treatments. The patient's first treatment on April 21, 1994, was delivered without incident in accordance with the prescription.

On April 22, 1994, the licensee informed NRC that after administering the first treatment to the patient, the physicians decided to include the patient's right eye orbit into the whole brain treatment field for subsequent treatment fractions. The radiation therapist was verbally instructed of the change, but the written directive was not changed.

The first portion of the second treatment was properly delivered using the modified treatment plan. However, the radiation therapist erroneously changed the treatment angle for the second portion of the treatment. The error meant that the left eye orbit received the radiation dose instead of the right eye orbit. Consequently, the left eye orbit erroneously received a dose of approximately 150 cGy (150 rad) and the right eye orbit received 150 cGy (150 rad) less than intended. The licensee stated that the patient received an explanation of the event and that the error did not affect the treatment. The entire treatment was completed on May 6, 1994, without further incident. The patient subsequently died as a result of the cancer. The NRC consultant determined that the misatlministration had no impact on the patient's death.

Cause or Causes—Failure of the authorized physician to prepare a change in the written directive, and failure to effectively supervise the administration of the treatment.

Action Taken To Prevent Recurrence

Licensee—The licensee's corrective actions included (1) policy changes to clarify the radiation therapists' responsibility when treatment plan changes are made; (2) retraining staff on quality management program (QMP) procedures; (3) requiring that on the first day of treatment the setup is supervised by a physician; (4) modifying the written directive form used for documenting written directives and subsequent revisions; and (5) reviewing and revising the current QMP and submitting the changes to NRC for review.

NRC—NRC Region III conducted an inspection from May 2 through June 9, 1994, to review the misadministration. NRC also contacted a medical consultant to review the incident. Significant violation of NRC requirements were identified during the inspection. The violations included (1) failure to make a written revision to a written directive prior to administering a revised teletherapy dose to a patient; (2) failure to review the written prescription; (3) failure to verify that details of the administration of the verbally revised dose were in accordance with the written directive and plan of treatment; (4) failure to follow the written QMP procedures established by the licensee; and (5) failure to include in written directives the overall treatment period. On July 11, 1994, NRC Region III issued a Notice of Violation (NOV) with a Severity Level III violation with no fine assessed (Letter from W.L. Axelson, Director, Division of Radiation Safety and Safeguards, to Walter Davis, Jr., Assistant Dean and Chief Facilities Officer, Washington University Medical Center, forwarding Inspection Report No. 030–15101/94001, Docket No. 030–15101, License No. 24–00063–10, dated July 11, 1994). The NOV requires the licensee to document the specific actions taken and any additional actions planned to prevent recurrence.

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94–11 Medical Brachytherapy Misadministration at The Queen's Medical Center in Honolulu, Hawaii

One of the AO reporting guidelines notes that administering a therapeutic radiation dose greater than 1.5 times that intend from a sealed source should be considered an AO.

Date and Place—May 2, 1994; The Queen's Medical Center; Honolulu, Hawaii.

Nature and Probable Consequences—A patient was prescribed to receive two treatments of 1000 centigray (cGy) (1000 rad) to the patient's right eye using a strontium-90 (Sr-90) eye applicator. The treatment plan called for the two treatments to be scheduled one week apart. The first treatment was properly delivered on April 25, 1994, by keeping the source in contact with the patient's right eye for 18 seconds. On May 2, 1994, when the patient returned for the second treatment, the same physician treated the patient, but a different oncology nurse assisted. The physician did not refer to the written directive or to the dose-rate information available with the eye applicator, although he had used other applicators in the past. He also did not discuss the procedure with the oncology nurse prior to the second treatment. At the end of the desired 18-second period, the nurse raised her voice and paused at the count of "18" (as she had been trained) without saying "stop" as the physician expected. As a result, the treatment continued until 32 seconds had passed, when the physician realized that the desired time must have elapsed. As a result, the patient received 1778 cGy (1778 rad) to the right eye during the second treatment, rather than the prescribed 1000 cGy (1000 rad).

The Radiation Safety Officer reported the misadministration to the NRC Operations Center at 8:37 p.m. on May 2, 1994. The referring physician was also notified on the same day. The patient was notified of the event during follow-up examinations by the referring physician on May 5 and May 14, 1994. No clinical damage was observed by the referring physician, and none is expected. The patient will be examined during subsequent follow-up visits to the medical center.

The NRC staff retained a medical consultant to evaluate the potential medical effects on the patient as a result of the misadministration. The medical consultant stated that dosimetry for Sr-90 eye applicators is difficult, due to calibration factors, clinical factors, and treatment technique. The consultant will send an update on the dosimetry and calibration in the near future. The medical consultant stated that the increased unintended dose is within the range of normal treatments. He indicated that the medical consultant stated that the increased unintended dose is within the range of normal treatments. He indicated that the

medical consequences of the misadministration would be negligible.

Cause or Causes—Part of Title 10 of the *Code of Federal Regulations* states that licensees must establish and maintain a written quality management program (QMP) to provide high confidence that each administration is in accordance with the written directive. However, at the time of the treatment, the licensee did not have a written procedure to require that staff members confirm that the planned administration will be as specified in the written directive. Consequently, neither the physician nor the oncology nurse referred to the written directive, nor did they discuss the procedure before it took place. Inconsistent training given to the oncology nurses in the method of timing treatments was also a contributing factor.

Actions Taken To Prevent Recurrence

Licensee—The licensee revised the QMP procedures to prevent recurrence of similar misadministrations. The new procedure specifies that prior to the procedure, the staff will determine that the eye applicator is as specified in the written directive. It also states that the staff must seek guidance prior to continuing if they do not understand any aspect of the written directive.

NRC—NRC Region IV conducted an inspection at The Queen's Medical Center on May 16–17, 1994, to review the circumstances associated with the misadministration and its probable cause(s). The NRC staff is currently reviewing the inspection results for possible violations, and enforcement action is pending.

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94–12 Medical Sodium Iodide Misadministration at Stamford Hospital in Stamford, Connecticut

One of the AO reporting guidelines notes that administering a radiopharmaceutical other than the one intended which results in any part of the body receiving unscheduled diagnostic radiation, and the actual dose to the wrong body part, is five times the upper limit of the normal range of exposures prescribed for diagnostic procedures involving that body part, can be considered an AO.

Date and Place—May 17, 1994; Stamford Hospital; Stamford, Connecticut

Nature and Probable Consequences—On May 19, 1994, the licensee notified the NRC Operations Center that on May 17, 1994, a patient was administered 37 megabecquerel (MBq) (1 millicurie [mCi]) of sodium iodide iodine–131 (I–131) for a whole body scan when no such study was prescribed. The licensee identified this misadministration during review of the scan by the authorized user.

A patient was scheduled by a referring physician to have a "whole blood red cell mass" test, correctly known as a "red blood cell volume" test. This test involves withdrawing an amount of blood from the patient, and labeling the patient's red blood cells *in vitro* with the radionuclide chromium–51 having a nominal activity of 1.02 to 3.7 MBq (30–100 microcurie [μCi]). This is followed by reinjection of the labeled red blood cells into the patient, and measurement of radioactivity in blood samples withdrawn from the patient 10 to 30 minutes later. The referring physician contacted the patient's Health Maintenance Organization (HMO), as the HMO requires that it place the order with Stamford Hospital. The HMO wrongly contacted the central booking area for Nuclear Medicine at Stamford Hospital, rather than the Clinical Laboratory which performs this test as authorized in Part 35.100 of Title 10 of the *Code of Federal Regulations*. The central booking secretary, and the HMO secretary, in an attempt to fit the procedure into one of those listed under Nuclear Medicine, converted the prescribed "Whole Blood Red Cell Mass" test into "Whole Body I–131 Scan," a scan that uses 37 MBq (1 mCi) of I–131. The central booking secretary then printed the name of the referring physician at the bottom of the form for "Consultation for Nuclear Medicine," and sent it to the Nuclear Medicine Department where it was received on May 13, 1994. A nuclear medicine technologist (NMT) looked at the form and saw that it was for "total red cell mass," but since the NMT knew the referring physician, the NMT assumed that this was a new test using I–131 to determine "total red cell mass." The NMT ordered the requested 37 MBq (1 mCi) I–131 capsule, which was administered on May 16, 1994. The patient was scanned on May 17, 1994, and May 18, 1994, the authorized user (AU), who is also the Radiation Safety Officer (RSO), read the films. The AU immediately noticed the error and notified the referring physician, who notified the patient.

The licensee estimated that the patient received a whole body dose equivalent of 4.7 millisievert (470 millirem) and a thyroid absorbed dose of 800 centigray [cGy] (800 rad). NRC was notified within 24 hours of the discovery of the misadministration. The licensee submitted a written report of the misadministration to NRC Region I on May 31, 1994.

Cause or Causes—The licensee had failed to establish a quality management program (QMP) for administering quantities of I–131 and iodine–125 (I–125) greater than 1.11 MBq (30 μCi) which would require written directives and failed to instruct supervised individuals in NRC requirements of a QMP.

Actions Taken To Prevent Recurrence

Licensee—The licensee now requires that (1) all requests for diagnostic or therapeutic procedures be in writing and sent via facsimile transmission from the referring physician's office; (2) all administrations above 1.11 MBq (30 μCi) of I–131 be done only by written order from the AU/RSO or other AU's authorized to do so; (3) all diagnostic and therapy requisitions will be reviewed by a radiologist, and designated as approved or not approved; (4) all technologists will be trained in regard to the clinical diagnosis for which each test is applicable; (5) the central booking staff will meet with the RSO and will be informed that the clinical diagnosis must match the test being requested, and that any deviation from the match or any diagnosis that they don't understand must be challenged and brought to the attention of the radiologist; and (6) the RSO and physicist will review the QMP annually and discuss it at the Radiation Safety Committee meeting and with the entire nuclear medicine staff.

NRC—NRC Region I conducted a special inspection on May 23 and 24, and June 1 and 6, 1994, to investigate the circumstances of the misadministration. An NRC inspection report (Letter from Charles W. Hehl, Director, Division of Radiation Safety and Safeguards, to Andrew H. Banoff, Vice President, Ambulatory Services, Stamford Hospital forwarding Inspection Report No. 030–01265/94–001, Docket No. 030–01265, License No. 06–06697–02, dated June 15, 1994) was issued June 15, 1994, and identified the following five apparent violations: (1) failure to establish a QMP for amounts of I–125 and I–131 greater than 1.11 MBq (30 μCi); (2) failure to conduct annual reviews of the QMP; (3) failure to have records specifying the methods used to verify patients identity which can be audited; (4) failure to have written directives signed by the authorized user; and (5) failure to instruct individuals in the QMP. An NRC medical consultant reviewed the information in the NRC's inspection report, the licensee's 15-day misadministration report, and the preliminary notification, and conducted telephone interviews with the RSO/AU.

The medical consultant concluded that without an actual measurement of the thyroid uptake of I–131 there was a moderate uncertainty in the estimate of the radiation dose to the thyroid, and estimated a radiation absorbed dose of approximately 530-to-1600 cGy (530-to-1600 rad). The medical consultation further stated that it is unlikely that the misadministration will result in a clinically detectable effect on the patient's thyroid. The impact on the patient's health should be negligible, with no expected long-term disability.

An enforcement conference was held with the licensee on June 24, 1994. The five violations were classified as a Severity Level III problem and a Notice of Violation and Proposed Imposition of Civil Penalty (Letter from Thomas T. Martin, Regional Administrator, to Andrew H. Banoff, Vice President, Ambulatory Services, Stamford Hospital forwarding Notice of Violation and Proposed Imposition of Civil Penalty—$1,250, Docket No. 030–01265, License No. 06–06697–02, dated July 11, 1994) for $1,250 was issued on July 11, 1994.

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94–13 Medical Brachytherapy Misadministration at Blodgett Memorial Hospital in East Grand Rapids, Michigan

One of the AO reporting guidelines notes that a therapeutic dose that is greater than 1.5 times the prescribed dose can be considered an AO.

Date and Place—June 14, 1994; Blodgett Memorial Medical Center; East Grand Rapids, Michigan.

Nature and Probable Consequences—On June 15, 1994, the licensee notified NRC that a misadministration occurred on June 14, 1994, during the second of a series of three treatments to an eye surface lesion using a strontium-90 (Sr-90) eye applicator. The misadministration resulted in the patient receiving a total dose that was 53.6 percent above the intended total dose.

The patient was to receive 25.5 gray (Gy) (2550 rad) in a series of three equal treatments. The intended treatment time for each of the three treatments was 19.1 seconds. The first treatment was performed as intended. During the second treatment, the treatment time was misread and the patient received treatment for 1 minute and 9 seconds. The second treatment dose was 30.68 Gy (3068 rad) instead of the intended 8.5 Gy (850 rad). The third treatment was not administered. Therefore, the patient's eye received a total dose of 39.18 Gy (3918 rad).

The patient and referring physician were notified of the incident by the licensee. The licensee and the referring physician do not anticipate any serious health consequences to the patient and have conducted follow-up medical examinations.

Cause or Causes—The licensee reported that when the first treatment fraction was performed on June 7, 1994, the treatment time of 19.1 seconds was erroneously recorded on the medical chart as 1.91 seconds. When it came time for the second treatment fraction to be administered, the therapist made the assumption that the treatment time was 1 minute 9 seconds. The physician did not verify the specific details of the administration prior to administering the brachytherapy dose, and did not confirm the treatment time. In addition, the licensee failed to establish a written Quality Management Program (QMP) for the Sr-90 eye application eye application, and the therapist was not instructed in the licensee's QMP.

Action Taken To Prevent Recurrence

Licensee—The licensee reported that in the future the brachytherapy quality management program (QMP) will be strictly adhered to when performing eye applications, and a physics check will be done before each treatment fraction. In addition, a source activity decay chart for Sr-90 will be provided to the physicians for immediate reference.

NRC—NRC Region III conducted an inspection from June 28 through July 6, 1994, to review the circumstances of the misadministration. An NRC medical consultant, retained to review the case, concluded that chances are favorable that the patient will suffer no health complications, but the risk of future complications is not zero.

On August 18, Region III issued a Notice of Violation (Letter from John B. Martin, Regional Administrator, NRC Region III, to Randy Oostra, Assistant Vice President, Blodgett Memorial Medical Center, forwarding Notice of Violation, NRC Inspection Report No. 030–02008/94001, Docket No. 030–02008, License No. 21–01424–03, dated August 18, 1994) to the licensee for the following violations: (1) treating a patient with the Sr-90 eye applicator without preparation of a written directive; (2) failure to establish and use a written QMP for the Sr-90 eye applicator; (3) investigation of the misadministration by the Radiation Oncology Department instead of the Radiation Safety Officer as required; (4) failure to maintain required records of the Sr-90 source usage; (5) failure to maintain the manufacturer's instructions for the eye applicator as required. There was no Civil Penalty assessed for the violations.

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94–14 Medical Brachytherapy Misadministration that Required Medical Intervention at The William W. Backus Hospital in Norwich, Connecticut

One of the AO reporting guidelines notes that a therapeutic dose that results in an actual dose greater than 1.5 times the prescribed dose can be considered an AO.

Date and Place—June 21, 1994; The William W. Backus Hospital; Norwich, Connecticut.

Nature and Probable Consequences—NRC Region I was notified by the licensee on June 21, 1994, of a therapeutic misadministration that had occurred at its facility earlier that day. The misadministration involved a patient who was prescribed to receive a prostate implant of 112 iodine-125 (I–125) seeds have a radionuclide activity per seed of between 15.9 and 17.0 megabecquerel (MBq) (0.43 and 0.46 millicurie [mCi]), but who instead was implanted with 112 I–125 seeds having an activity of 166 MBq (4.49 mCi) each.

Following the preplanning dosimetry performed at Yale-New Haven Hospital (YNHH), a written directive was prepared by an authorized user and was sent via facsimile transmission to The William H. Backus Hospital on June 16, 1994, by the dosimetrist from YNHH. (YNHH is under contract with The William W. Backus Hospital to provide radiation oncologists, dosimetrists and health physicists, and two of the physicians from YNHH are listed as authorized users on The William W. Backus Hospital's NRC license). The Chief Nuclear Medicine Technologist (NMT) received the directive and called Medi-Physics in Arlington Heights, Illinois, to place the order for the required I–125 seeds. The package containing the seeds arrived at The William W. Backus Hospital on June 17, 1994, and was received by one of the NMTs, who was not the same individual who had ordered the seeds. The NMT opened the package after making the required radiation surveys. In accordance with the licensee's established procedure, information on the packing slip that accompanied the package was compared with the information that was posted on the lead "pig" that contained the seeds. The verified information included the number of seeds (112), activity per seed (166 MBq [4.49 mCi] per seed), and total activity (18,600 MBq [502.88 mCi]), and was entered into the sealed source inventory log book by the NMT.

On June 21, 1994, the dosimetrist from YNHH arrived at The William W. Backus Hospital to assist in the implant procedure. The same dosimetrist had performed the preplanning dosimetry, and had prepared the written directive that was signed by the authorized user. The dosimetrist took the package after reviewing the documentation, but failed to notice that the activity of the seeds was 10 times higher than the prescribed activity. The dosimetrist made entries into the log book before removing the container from the nuclear medicine hot lab, and the entries documented that 112 seeds with activity of 166 MBq (4.49 mCi) each were taken to the operating room.

The implant procedure was completed between 10 and 11 a.m. on June 21, 1994, in the presence of the authorized user, who at the completion of the procedure documented that 112 I–125 seeds with total activity of 1840 MBq (49.73 mCi) were implanted. Following the implant procedure, the required radiation surveys were made by the dosimetrist and the dose rate of 1 microcoulomb per kilogram (4 milliroentgen) per hour at 1 meter (39 inch) from the patient was recorded by the dosimetrist.

The patient was moved to the recovery area, and the dosimetrist returned to the nuclear medicine department to complete the documentation required by the licensee's procedure. At this time, the dosimetrist noted discrepancies between the entries made in the log book by the NMT at the time of receipt of the package, and those made by himself earlier that morning. The dosimetrist assumed that these were clerical errors, and therefore "corrected" two of the three sets of entries in the log book by drawing lines across them and entering the "correct" figures as 16.6 MBq (0.449 mCi) per seed and 1860 MBq (50.288 mCi) total, respectively.

The dosimetrist realized the possibility of an error when it was noted that the packing slip also indicated that each seed had an activity of 166 MBq (4.49 mCi). The dosimetrist contacted the Chief NMT, and together they both called Medi-Physics to verify the activity of the seeds. Upon confirmation by Medi-Physics that each seed had an activity of 166 MBq (4.49 mCi), the surgeon was notified of the error. (The surgeon was also the patient's referring physician.) Unable to contact the authorized user who had supervised the implant procedure, the surgeon consulted with a second authorized user (also from YNHH) and the two agreed that a surgery to explant as many seeds as possible was the most appropriate approach under the circumstances. This involved removal of the patient's prostate gland where a majority of seeds were located. The patient and his family were informed of the misadministration, and the patient was brought back to the operating room and prostatectomy was completed at approximately 4:00 p.m.

The licensee was able to explant 69 of the 112 seeds that were implanted, leaving 43 seeds still remaining inside the patient's body. During the explanting procedure, one of the I–125 seeds was ruptured. The patient was administered prophylactic potassium iodide to block the possible uptake of I–125 by the patient's thyroid. The licensee also collected the fluids and the tissue that may have been contaminated. Approximately 5 liters (5.28 quarts) of fluid were collected and appeared to be contaminated with approximately 1.85 MBq (0.050 mCi) of I–125. The personnel who were present in the operating room during the surgery were also monitored for possible uptake, and the results indicated no internal contamination of these personnel.

The patient was transferred to YNHH on June 23, 1994, in order that a more precise localization of the remaining seeds could be made by the use of equipment available at that facility. At YNHH three-dimensional scans were taken, and on June 27, 1994, the patient was again operated on and an additional 15 seeds were explanted. This left 28 seeds still remaining in the patient. The remaining seeds appeared to be scattered in the lower pelvic region and the licensee decided that further mitigating surgery at this time was not warranted. The patient appeared to be in stable condition. Preliminary dose calculations by the licensee indicated that the remaining seeds would cause the body tissue to receive a radiation dose of the same order of magnitude as would have been received by the surrounding organs and tissue if the originally planned seeds were permanently implanted. The patient was discharged from YNHH on July 4, 1994.

Cause or Causes—There was a misunderstanding in communication between the Chief NMT who ordered the seeds, and the representative of Medi-Physics who received the order. The Chief NMT and the NMT were not familiar with the magnitude of the radionuclide activities that are used in prostate implant procedures. The NMT did not inform the Chief NMT as to the activity received. The Chief NMT was confused by the two telephone calls that were received from Medi-Physics subsequent to placing of the order, but failed to act to clear the confusion. The licensee did not have any procedure that required a comparison of the material ordered and the material received. The YNHH dosimetrist failed to notice that the activity of the seeds was 10 times higher when he logged out the seeds. The licensee did not have a procedure that required an independent verification of the activity that was being loaded into the implant needles. The authorized user relied totally on the dosimetrist and did not verify the activity of the seeds. Dual control (by the licensee and YNHH) of the radiation safety program related to brachytherapy procedures caused the YNHH to assume that the Chief NMT was familiar with the ordering of the radioactive material and did not need additional training.

Actions Taken To Prevent Recurrence

Licensee—The licensee made a commitment to voluntarily suspend its brachytherapy program until written authorization is granted by NRC to resume the program. This commitment was documented in a Confirmatory Action Letter (Letter from Charles W. Hehl, Director Division of Radiation Safety and Safeguards, to Brian J. Smithwick, Vice President and Chief Executive Officer, The William W. Backus Hospital, forwarding Confirmatory Action Letter 1–94–010, Docket No. 030–01287, License No. 06–11734–02, dated June 23, 1994). The licensee was considering a requirement that radioactive sources be assayed prior to implantation, and that the implant sources be ordered in writing from the supplier.

NRC—NRC Region I dispatched an inspection team, which arrived at the facility at approximately 2:00 p.m. on June 22, 1994, to review the circumstances surrounding the misadministration. An NRC medical consultant was engaged to assess the effects of the misadministration on the patient. The medical consultant reviewed the events and the mitigating actions that the licensee has taken to minimize the impact of the misadministration on the patient. The consultant advised NRC that the licensee's actions appeared appropriate. On June 23, 1994, NRC Region I, in consultation with the NRC Office for Nuclear Material Safety and Safeguards (NMSS) and the NRC Office for Analysis and Evaluation of Operational Data, upgraded its inspection effort to an Augmented Inspection Team (AIT). NMSS contacted the U.S. Department of Energy's Idaho National Engineering Laboratory (INEL), who formed a team of consultants to provide technical support to the AIT. The AIT and INEL support consultants returned to The

William W. Backus Hospital on June 28, 1994 and also to YNHH. NRC Region I issued a press release on June 23, 1994, and the AIT held a public exit meeting with the licensee at The William W. Backus Hospital on July 7, 1994. NRC has received the information gathered on the incident by INEL support team and incorporated this information in the AIT report issued to the licensee on August 4, 1994 (Letter from Charles W. Hehl, Director, Division of Radiation Safety and Safeguards, to Michael T. Moore, President and Chief Executive Officer, The William W. Backus Hospital, forwarding NRC Augmented Inspection Team (AIT) Report No. 030–01287/94–001, Docket No. 030–01287, License No. 06–11734–02, dated August 4, 1994). In a letter to the licensee dated August 10, 1994, NRC indicated that its review of the AIT report noted two apparent violations: (1) 10 CFR 35.32(a); and (2) 10 CFR 35.25(a) (Letter from Charles W. Hehl, Director, Division of Radiation Safety and Safeguards, to Michael T. Moore, President and Chief Executive Officer, The William W. Backus Hospital, forwarding NRC Inspection Report No. 030–01287/94–001, Docket No. 030–01287, License No. 06–11734–02, dated August 10, 1994). NRC will discuss these apparent violations at an Enforcement Conference scheduled for August 24, 1994.

Dated at Rockville, MD this 26th day of October, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–27005 Filed 10–31–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–30266–ML–Ren; ASLBP No. 95–701–01–ML–Ren]

Innovative Weaponry, Inc.; Albuquerque, New Mexico; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials License Renewal proceeding.

Innovative Weaponry, Inc., Albuquerque, New Mexico

Byproduct Material License No. 30–23697–01E

The President Officer is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989). This action is in response to an October 5, 1994 request for a hearing submitted by Innovative Weaponry, Inc. (IWI). The request is in response to a "Notice of Denial of License Application" and "Demand for Information" issued by the NRC Staff to IWI on September 23, 1994. The notice specifies the basis for the Staff denial of a license renewal application of IWI.

The presiding officer in this proceeding is Administrative Judge Charles Bechhoefer.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Jerry R. Kline to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bechhoefer and Judge Kline in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge Charles Bechhoefer, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Jerry R. Kline, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Rockville, Maryland, this 25th day of October 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–27002 Filed 10–31–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–339]

Virginia Electric and Power Company; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its April 8, 1993, as supplemented July 28, 1993, and September 2, 1993, application for proposed amendment to Facility Operating License No. NPF–7 for the North Anna Power Station, Unit No. 2, located in Louisa County, Virginia.

The proposed amendment would have allowed use of the Westinghouse laser-welded sleeving process for repair of defects in steam generator tubes.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 12, 1993 (58 FR 28062). However, by letter dated October 11, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 8, 1993, as supplemented by letters dated July 28, 1993, and September 2, 1993, and the licensee's letter dated October 11, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland this 25th day of October, 1994.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Acting Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27003 Filed 10–31–94; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

GENERAL SERVICES ADMINISTRATION

U.S. Court Facilities in Brooklyn and Reuse of General Post Office Environmental Impact Statement

AGENCIES: Postal Service, General Services Administration.

ACTION: Notice of Intent.

SUMMARY: The United States Postal Service and the United States General Services Administration are issuing this notice to advise the public that an Environmental Impact Statement will be prepared and considered for proposed Federal Court Facilities and reuse of the General Post Office in Brooklyn, New York.

FOR FURTHER INFORMATION CONTACT:

Mr. Leon Levine, Environmental Specialist, United States Postal Service, P.O. Box 40591, Philadelphia, PA 19197–0591

Mr. Peter A. Sneed, Director, Planning Staff, Public Buildings Service, U.S. General Services Administration, 26

Federal Plaza—Room 1609, New York, NY 10278

SUPPLEMENTARY INFORMATION: The United States Postal Service (USPS) and the United States General Services Administration (GSA) will prepare an Environmental Impact Statement (EIS) for the proposed Federal Court project. The project will entail reuse and modernization as well as partial infill construction of the Brooklyn General Post Office building; demolition of the existing Celler Federal Office Building and construction of a new, larger court building in its place; and modernization of the existing Courthouse. The General Post Office Building, located at 271 Cadman Plaza East, across Tillary Street from the Emanuel Celler Federal Office Building and Courthouse at 225 Cadman Plaza East, is listed on the State and National Registers of Historic Places, and is a designated New York City Landmark. The two parcels total approximately 4 acres and the three existing buildings contain approximately 1,011,000 gross square feet. As proposed, the project would provide approximately 1,531,000 gross square feet, and would provide space for the Federal Courts, the U.S. Attorney, the U.S. Marshals Service, and various support functions. A portion of the ground floor of the General Post Office Building would continue to house a retail postal facility. The proposed project is being undertaken to serve the dual needs of USPS, which seeks an appropriate reuse for the General Post Office building, now that its mail-processing functions have been relocated to a new facility in the Spring Creek area of Brooklyn, and GSA, which needs to accommodate the projected space requirements of the Federal Courts and related agencies.

The EIS will evaluate alternative sites and designs for the proposed court facilities and reuse of the General Post Office as well as the No Build alternative. The EIS will assess impacts on the affected environment, including the following resource areas: land use and community facilities, historic resources, visual character, economics, traffic and transportation, air quality, noise, hazardous materials, and utilities. Construction impacts will also be assessed.

The EIS is being prepared in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations and procedures as set forth in the Code of Federal Regulations (CFR), the USPS *Facilities Environmental Handbook*, and the GSA *PBS Handbook Preparation of Environmental Assessments and Environmental Impact Statements*. To ensure that the full range of issues and alternatives relating to the proposed project are addressed, comments and suggestions are being solicited. To facilitate the receipt of comments, a public scoping meeting will be held on November 15, 1994, from 2 PM to 4 PM and 7 PM to 9 PM in the Dibner Library Auditorium, Polytechnic University, CATT Building, 5 Metrotech Center, Brooklyn, NY. Written comments may be mailed to either of the informational contact persons identified above no later than December 2, 1994.

Dated: October 24, 1994.

Dennis E. Wamsley,

USPS Realty Asset Management.

Dated: October 26, 1994.

Karen R. Adler,

Regional Administrator, GSA.

[FR Doc. 94–27021 Filed 10–31–94; 8:45 am]

BILLING CODE 6820–23–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34890; File No. SR–Amex–94–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Listing of Entities Resulting From Limited Partnership Rollups

October 25, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on September 6, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to adopt Section 126 to the *Company Guide* to allow the listing of entities resulting from limited partnership rollup transactions under specified conditions and to impose certain corporate governance standards on limited partnerships. The text of the proposed rule follows (italics reflects proposed additions to the Rules):

§ 126 LIMITED PARTNERSHIPS—No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Exchange Act), shall be eligible for listing unless (i) the rollup transactions was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Exchange Act, as it may from time to time be amended and (ii) a broker-dealer which is a member of a national securities association subject to Section 15A(b)(12) of the Exchange Act participates in the rollup transaction. The applicant shall further provide the Exchange with an opinion of counsel that the rollup transaction was conducted in accordance with the procedures established by such association.

Each limited partnership listed on the Exchange shall have a corporate general partner or co-counsel partner which must satisfy the independent director and audit committee requirements of Section 121.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In December 1993, Congress adopted the Rollup Reform Act of 1993 to regulate limited partnership rollups. The Rollup Reform Act amended Section 6 of the Securities Exchange Act of 1934 ("Exchange Act") to provide that the rules of an exchange must prohibit the listing of a rollup security unless "the transaction was conducted in accordance with procedures designed to protect the rights of limited partners." Section 6(b)(9) of the Exchange Act further specifies certain procedures which would protect limited partners' rights.

In accordance with Section 6(b) of the Exchange Act, the Exchange is proposing to adopt a new Section 126 to

the *Company Guide* which would condition the listing of securities issued in a rollup transaction upon satisfaction of the criteria set forth in Section 6(b)(9) of the Exchange Act. The new section would also provide that a broker-dealer which is a member of the NASD must participate in the rollup transaction, and that the issuer should provide the Exchange with an opinion of counsel confirming that the rollup was in fact conducted in accordance with NASD procedures. This will enable the Exchange to rely upon the regulatory scheme adopted by the NASD (and recently approved by the Commission) to govern the listing of rollups.

In addition, the Exchange is proposing to amend Section 126 to require that limited partnerships have at least one corporate general partner, or co-general partner, which would have to satisfy the Exchange's independent director and audit committee requirements (at least two independent directors, and an audit committee, a majority of whose members must be independent directors). The NASD has a similar rule, while the NYSE has a similar policy.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Exchange Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will prevent fraudulent and manipulative acts, promote just and equitable principles of trade and protect investors and the public interest since it will prohibit the listing of any securities resulting from an unfair rollup transaction and will impose enhanced corporate governance standards for limited partnerships.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–34 and should be submitted by November 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27038 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34897; File No. SR–NASD–94–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Fees for Member Firms Employing Statutorily Disqualified Individuals

October 26, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 14, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing of fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. However, the NASD does not plan to assess the fee until January 1, 1995. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

The NASD is proposing to amend Schedule A, Section 12 to the By-Laws to require that the initial application fee for any individual who is subject to a statutory disqualification ("SD") be assessed at $1,500.00, and at an additional $2,500.00 if the Association determines that the applications should be subject to the full hearing process. The NASD also is proposing to redesignate the existing paragraph in Section 12 as subsection (a) and add a new subsection (b) to require that all Tier 1 SDs be assessed an annual fee of $1,500.00, and all Tier 2 SDs be assessed an annual fee of $1,000.00. Proposed new language is in italics; proposed deletions are in brackets.

Schedules to the By-Laws

Schedule A

* * * * *

Sec. 12. Application *and Annual Fees* for Member Firms with Statutorily Disqualified Individuals

(a) Any member firm seeking to employ or continuing to employ as an associated person any individual who is subject to a disqualification from association with a member as set forth in Article II, Section 4 of the Association's By-Laws shall, upon the filing of an application pursuant to Article II, Section 3, paragraph (d) of the Association's By-Laws, pay to the Association a fee of [$1,000.00] *$1,500.00. Any member firm whose application filed pursuant to Article II, Section 3, paragraph (d) of the Association's By-Laws results in a full hearing for eligibility in the Association pursuant to Article VII, Section 2 of the NASD's Code of Procedure, shall pay to the Association an additional fee of $2,500.00.*

(b) Any member firm continuing to employ as an associated person any individual subject to disqualification from association with a member as set forth in Article II, Section 4 of the

Association's By-Laws shall pay annually to the Association a fee of $1,500.00 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of $1,000.00 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Rule 19h–1 under the Exchange Act[1] requires a member to supervise any SD employed by that member if the SD is statutorily disqualified because of serious securities laws violations but has been granted new employment in the securities industry following a membership continuance proceeding. Pursuant to Article VI of the By-Laws of the Association, NASD members must file an application for relief from disqualification pursuant to Article II, Section 3, paragraph (d) of the Association's By-Laws and must pay an application fee pursuant to Section 12, Schedule A of the By-Laws if they seek to employ or continue to employ as an associated person any SD. The current fee imposed under Section 12 is $1,000.00. Some applications require the full National Business Conduct Committee ("NBCC") hearing process pursuant to Article VII, Section 2 of the NASD's Code of Procedure.

The NASD classifies SDs that are admitted or re-admitted to registered status with a member firm as Tier 1, Tier 2 or Tier 3 based upon regulatory priority. Tier 1 consists of: (i) SDs statutorily disqualified pursuant to the statutory disqualification provisions in effect before the Securities Acts Amendments of 1990 (generally securities-law and/or commodities-law violations); and (ii) those persons designated pursuant to the Securities Acts Amendments of 1990 whose offenses are such that an annual review of their activities is warranted. Tier 1 SDs usually are subject to strict supervision by the member and possible limitations upon their activities.

Tier 2 generally consists of SDs statutorily disqualified pursuant to the Securities Acts Amendments of 1990 whose offenses typically are not related to securities-law or commodities-law violations and do not warrant the level of supervision required of Tier 1 individuals.

Tier 3 consists of those SDs who are permitted to enter or re-enter the securities industry without any limitations imposed upon their activities or any special supervisory requirements placed upon the firms that employ these SDs.

Earlier this year, the NASD conducted an analysis of the work effort and costs associated with the processing and review of SD applications. The NASD determined that, on average, it incurs costs of approximately $1,600.00 per application if an application does not go to the full hearing process and costs of approximately $3,900.00 per application if an application requires the full hearing process. Accordingly, the NASD is proposing to amend Section 12 to Schedule A of the By-Laws to require that the initial SD application fee be assessed at $1,500.00 and that an additional $2,500.00 be assessed when the Association determines that the application should be subject to the full hearing process.

The NASD's analysis also covered the additional oversight and examination costs that the NASD incurs with respect to SDs that member firms continue to employ. The NASD has determined that Tier 1 SDs, who are subject to an annual examination, incur average annual oversight costs of approximately $1,525.00 per person. The NASD has further determined that Tier 2 SDs, who are subject to at least one examination of their main or branch office within the first 24 months of employment, incur average annual oversight costs of approximately $1,000.00. Accordingly, the NASD is proposing to amend Section 12 to Schedule A of the By-Laws to reclassify the existing paragraph in Section 12 as subsection (a), and to add a new subsection (b) to require that all Tier 1 SDs be assessed an annual fee of $1,500.00, and all Tier 2 SDs be assessed an annual fee of $1,000.00. Tier 3 SDs will not be charged a fee because no additional burden is imposed upon the NASD with respect to their continuing employment.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[2] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members in that the proposed rule change equitably allocates among member firms the costs incurred by the NASD for its oversight of the initial and continuing employment of SDs.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and Section (e) of Rule 19b–4 promulgated thereunder in that it constitutes a due, fee or other charge. However, the NASD has determined not to implement the rule change until January 1, 1995.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[1] 17 CFR 240. 19h–1 (1993).

[2] 15 U.S.C. 78o–3.

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94-27042 Filed 10-31-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34889; File No. SR-NYSE-94-35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rollup Transactions

October 25, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on October 6, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt listing standards for securities issued in limited partnership rollup transactions. The proposal responds to the requirements of the Limited Partnership Rollup Reform Act of 1993 ("Reform Act"). The rule will become effective on December 17, 1994, the date on which the Reform Act takes effect. The text of the proposed rule follows (italics reflects proposed additions to the rules; deletions are in [brackets]):

105.00 Limited Partnerships Rollups

The Exchange will not list a security issued in a limited partnership rollup transaction, as that term is defined in paragraphs (4) and (5) of section 14(h) of the Securities Exchange Act of 1934, unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners. The Exchange will consider a rollup transaction to have been conducted in accordance with such procedures only if: (a) a broker-dealer registered with the Securities and Exchange Commission participates in the transaction; and (b) the Exchange receives a written opinion of outside counsel stating that such broker-dealer's participation in the rollup transaction was conducted in compliance with rules of a national securities association designed to protect the rights of limited partners, as specified in the Limited Partnership Rollup Reform Act of 1993.

[105.00] *106.00* Miscellaneous Matters

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[105.01] *106.01* Stock Symbol Allocation

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[105.02] *106.02* Specialist Allocation

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[105.03] *106.03* Original Listing Ceremonies

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Reform Act requires that a national securities exchange adopt rules prohibiting "the listing of any security issued in a limited partnership rollup transporation * * * unless such tranaction was conducted in accordance with procedures designed to protect the rights of limited partners * * *."[1] The purpose of the proposed rule change is to comply with the requirements of the Reform Act.

The Reform Act contains three related requirements regarding SRO rollup rules: the exchange listing standard discussed above; a similar requirement for national securities associations regarding the authorization of quotations in rollup securities on an automated interdealer quotation system; and a requirement that national securities associations adopt rules prohibiting its members from participating in a limited partnership rollup transaction unless the transaction is conducted in accordance with procedures designed to protect the rights of limited partners.

As a result of these requirements, a broker-dealer that participates in a rollup transaction will be subject to national securities association rules governing its participation in the transaction.[2] Those rules will contain the same substantive requirements that the Reform Act requires exchanges to impose before listing a rollup security. Accordingly, if a broker-dealer participates in a rollup transaction, the rules governing a broker-dealer's participation in the transaction will ensure that the transaction is conducted in a manner consistent with the requirements of the Reform Act.

The proposed rule provides that the Exchange will list a rollup transaction only if a broker-dealer participates in the transaction. Such participation will result in the triggering of the national securities association rollup rules governing rollup transactions. The proposed rule will also require that the Exchange receive a written opinion of outside counsel stating that the broker-dealer conducted its participation in the rollup transaction in compliance with the applicable rules. Thus, the Exchange will not list securities issued in rollup transactions unless investors are provided with the substantive protections required by the Reform Act.

2. Statutory Basis

The basis under the 1934 Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or approriate in furtherance of the purposes of the Act.

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[1] *See* Section 303(b) of the Reform Act (which also specifies the manner in which the rights of limited partners are to be protected).

[2] With limited exceptions not relevant here, Section 15(b)(8) of the Act requires that all broker-dealers be members of a national securities association.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–35 and should be submitted by November 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27037 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34898; International Series Release No. 735; File No. SR–PHLX–94–47]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Amendment to Foreign Currency Option Trading Hours

October 26, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on September 22, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend PHLX Rule 101, "Hours of Business," to provide that foreign currency option ("FCO") trading will be conducted between 2:30 a.m. Eastern Time ("ET") and 2:30 p.m. ET each business day.

Notice of the proposal appeared in the **Federal Register** in Securities Exchange Act Release No. 34798 (October 6, 1994), 59 FR 51649 (October 12, 1994). No comments were received on the proposal.

Currently, PHLX Rule 101 provides that the FCO trading session will be conducted between 1:30 a.m. ET and 2:30 p.m. ET each business day. The PHLX proposes to amend PHLX Rule 101 to move the opening of FCO trading from 1:30 a.m. ET to 2:30 a.m. ET for all PHLX-listed FCOs except the Canadian dollar, which will continue to commence trading at 7:00 a.m. ET each business day.

According to the PHLX, the Exchange's FCO trading hours for the last nine months have commenced at 1:30 a.m. ET each Monday through Friday and terminated at 2:30 p.m. ET on the afternoon of each trading day. During that time, less than one percent of the PHLX's FCO volume was generated during the 1:30 a.m. ET to 2:30 a.m. ET time period. Upon the recommendation of the Exchange's FCO Committee, a standing committee of the Board of Governors ("Board"), the Board approved the proposed adjustment in trading hours to change the commencement of FCO trading from 1:30 a.m. ET to 2:30 a.m. ET. The proposal is designed to ease the staffing burden on current registered FCO specialist units as well as floor brokerage units and registered option trader firms. The PHLX proposes to implement the adjusted 2:30 a.m. ET commencement of FCO trading on October 31, 1994, to coordinate with the resumption of Eastern Standard time, as October 30, 1994, will mark the end of Eastern Daylight savings time.

The PHLX believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[3] in that it is designed to foster just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market. The PHLX has stated that over the last nine months less than one percent of the PHLX's FCO trading volume occurred during the 1:30 a.m. ET to 2:30 a.m. ET time period. Accordingly, the Commission believes that the proposal to begin FCO trading at 2:30 a.m. ET, rather than at 1:30 a.m. ET, will not have a material impact on market participants. At the same time, the proposal will help to reduce the operational burdens on the current registered FCO specialist units as well as floor brokerage units and registered option trader firms. In addition, the Exchange will be open for trading FCOs (other than Canadian dollar FCOs) from 2:30 a.m. ET to 2:30 p.m. ET, so that investors will have the ability to access the Exchange's FCO market. Moreover, the Commission notes that the Exchange has issued a notice to its membership advising them of the proposed rule change, and will issue another notice to its members upon approval of the proposal, thereby avoiding any possible investor confusion.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of the proposal will allow the PHLX to implement the proposal on the morning of October 31, 1994, to coordinate with the resumption of Eastern Standard time. In addition, accelerating approval of the proposal will permit the Exchange to ease the operational burdens associated with the low FCO trading activity that occurs between 1:30 a.m. ET and 2:30 a.m. ET. Based on the foregoing, the Commission believes that it is consistent with

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] 15 U.S.C. 78f(b)(5) (1988).

Section 6(b)(5) of the Act to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[4] that the proposed rule change (File No. SR–PHLX–94–47) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27043 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34893; File No. SR–Phlx–92–09]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Prohibiting Trading the Quote Spread on PACE

October 25, 1994.

On April 10, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to prohibit the use of the Phlx Automated Communication and Execution System ("PACE") volume execution guarantees with offsetting orders in low-volatility, high volume stocks in order to "trade the quote spread." On April 14, 1994, and June 6, 1994, the Phlx submitted Amendment Nos. 1 and 2, respectively.[3]

The proposed rule change, as amended, was published for comment in Securities Exchange Act Release No. 34259 (June 27, 1994), 59 FR 34000 (July 1, 1994). No comments were received on the proposal.

The proposed rule change adopts Commentary .18 to Phlx Rule 229,[4] which details the execution guarantees due a PACE order. Commentary .18 generally prohibits members from engaging in any established pattern of trading via PACE to generate short-term trading profits by exploiting PACE volume execution guarantees.

PACE is the Exchange's automated order routing, delivery and execution system for equity securities. Pursuant to Phlx Rule 229, customer orders entered through PACE are entitled to certain execution guarantees. For example, limit orders for less than 600 shares become due an execution once an accumulative volume of 1,000 shares of that security prints at the limit price or better on the New York Stock Exchange ("primary market guarantee").[5]

As used in the proposed rule change, unjustly exploiting the PACE volume execution guarantees by trading the quote spread refers to the practice of placing an order to buy at the primary market's bid price and simultaneously or shortly thereafter placing an order to sell for a related account at the primary market's offer price, or vice versa. This creates the expectation that each of the orders will be elected at their respective limit prices when the required volume trades on the primary market. When both orders are filled due to volume guarantees, a profit is locked-in, equal to the amount of shares multiplied by the quote spread less commissions. This profit can be made within minutes after the orders are placed and without any quote change in the stock. This practice usually is most successfully undertaken with respect to low-volatility, high-volume stocks, because the bid-ask spread for these stocks is often narrow and static.

For the reasons described below, the Commission believes that the proposed rule change is consistent with the Act, and the rules and regulations thereunder applicable to a national securities exchange, and in particular Section 6(b).[6] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public in that it prevents the misuse of the Exchange's execution guarantees available through PACE.[7]

The Commission believes the use of the PACE system as proscribed in the proposal is inappropriate and inconsistent with PACE's functioning as a small order execution system. Automated order routing and execution systems were described in general in the *Report of the October 1987 Market Break*.[8] The *Report* stated that these systems provide the primary means of executing the vast majority of small-sized trades both for listed and OTC stocks, and that, with the exception of program trades, most of these trades are for retail customers. According to the *Report*, small order routing and execution systems are designed to receive smaller sized orders electronically from broker-dealers and route them to the appropriate stock exchange floor for automatic execution or for manual handling by the specialist. The Exchange's PACE system is one of these systems. The Commission believes, therefore, that PACE was intended to facilitate execution of small orders, and not to force Phlx specialists to trade at the inside primary market quote with traders trying to get the advantage of the spread without taking any risk.

The Commission also believes that trading the quote spread as proscribed in the proposal potentially can result in misleading market information with respect to the level of bona fide investment interest in the subject stocks. Using PACE to trade the quote spread could potentially disadvantage other market participants by ultimately reducing liquidity. Moreover, this type of trading is unfair to the PACE specialists, who are not obligated to trade at the same prices as the primary market, but who have agreed that for small, retail orders, they will provide primary market price guarantees.

The Commission further believes the Exchange has adequately identified in the proposal the violative trading activity and what constitutes an established pattern of violative trading. The proposal makes clear that three occurrences of proscribed trading in the same security within a one-month period constitute an established pattern in violation of Rule 229. Because the rule excludes from its coverage random or inadvertent violations, the Commission believes that the Phlx has reasonably tailored and defined its prohibition.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the

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[4] 15 U.S.C. 78s(b)(2) (1988).

[5] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* letters from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, Commission, dated April 14, 1994, and June 1, 1994. In Amendment No. 1 the Phlx amended the language of the rule to clarify that three occurrences of trading the quote spread within one month may constitute a violation of the rule. In Amendment No. 2 the Phlx (a) clarified that the three occurrences are meant to be in the same stock, and (b) changed the word "may" to "will" constitute a violation.

[4] *See* Philadelphia Stock Exchange Rules, Rule 229.

[5] *See* Phlx Rule 229, Supplementary Material .10(a).

[6] 15 U.S.C. § 78f(b) (1988).

[7] *See generally* Securities Exchange Act Release No. 33678, 59 FR 10192 (March 3, 1994), in which the Commission approved a NYSE proposed rule change prohibiting certain abusive uses of that Exchange's odd-lot order execution system. The prohibited uses were not consistent with the traditional odd-lot investing practices of smaller investors for which the odd-lot order execution system was developed.

[8] Division of Market Regulation of the Securities and Exchange Commission, *Report of the October 1987 Market Break* (February 1988) ("*Report*").

[9] 15 U.S.C. § 78s(b)(2) (1988).

proposed rule change (SR–Phlx–92–09) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27036 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34886; File No. SR–SCCP–94–05]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change Modifying SCCP Rule 2, Section 1 to Require Execution of a Participant's Agreement by Participants

October 24, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on October 3, 1994, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes to modify SCCP Rule 2, Section 1 to require each participant to sign a Participant's Agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will amend SCCP Rule 2, Section 1 with respect to participants' obligations to SCCP. The proposed rule change will add language requiring each participant to execute a Participant's Agreement and language stating that SCCP's by-laws, rules, and procedures shall supersede any conflicting provision of the Participant's Agreement. The proposed rule change also will delete language requiring participants to execute and deliver a written instrument specifying their adherence to certain obligations set forth in SCCP Rule 2. This second written agreement will be unnecessary because once a participant signs a Participant's Agreement, the participant has agreed to abide by all of the rules and obligations of SCCP, including those set forth in SCCP Rule 2. Accordingly, all provisions of Rule 2 will be directly enforceable against participants.

The proposed rule change will codify SCCP's existing but unwritten policy and practice of requiring all participants to execute a Participant's Agreement. The proposed rule change is consistent with Section 17A of the Act and particularly with Section 17A(b)(3) (A) and (F) in that the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose an inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SCCP consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–94–05 and should be submitted by November 22, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27039 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34891; File No. SR–PSE–94–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Expansion of the Exchange's Firm Quote Rule to 20 Contracts

October 25, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on June 20, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend PSE Rule 6.86, "Trading Crowd Firm Disseminated Market Quotes," to increase from 10 to 20 contracts the minimum size of all non-broker/dealer customer option orders that are guaranteed for execution at the bid/offer displayed as the disseminated

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[10] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

market quote at the time the order is announced or displayed at the option's trading post.

The proposal was published for comment in the **Federal Register** in Securities Exchange Act Release No. 34571 (August 22, 1994), 59 FR 44446 (August 29, 1994). No comments were received on the proposal.

Currently, PSE Rule 6.86 requires each trading crowd on the PSE to provide a depth of 10 option contracts for all non-broker/dealer customer orders at the bid/offer displayed as the disseminated market quote at the time the order is announced or displayed at the option's trading post. The PSE proposes to amend PSE Rule 6.86 to increase the minimum size guarantee for non-broker/dealer options orders from 10 to 20 contracts. In addition, the PSE proposes to make conforming amendments to PSE Rule 6.86(d) and to Commentaries .01, .02, and .03.[3]

The PSE states that the proposal is a response to competitive market conditions and is designed to enhance the PSE's competitive position in the securities industry. The Exchange believes that the proposal will result in improved market quality and market maker performance. In addition, the PSE believes that the proposal will ensure greater depth of markets at the Exchange and will result in better executions of customers orders to buy or sell 20 contracts or less. According to the PSE, the proposal will also encourage Exchange market makers to be more competitive in making markets, and thereby will facilitate transactions in securities and improve the quality of the PSE's options markets. Moreover, the Exchange believes that by attracting greater customer order flow to the Exchange, the proposed rule change should enhance market depth and liquidity and result in tighter options pricing spreads.

Based on the combined capital of the members of each trading crowd, the PSE believes that its market maker system can provide sufficient liquidity to meet the needs resulting from this rule change. The Exchange does not believe that the proposal will require its market makers to assume undue risks. The PSE is able currently to provide a guarantee for customer orders of 10 contracts or less in all options series, including long-term options ("LEAPs"), and the Exchange believes that it has the capacity to expand that guarantee to 20 contracts in all series, including LEAPs. Previously, the Exchange has evaluated the operation of current PSE Rule 6.86 and has concluded that the program has resulted in better executions for customer orders and an improvement in the quality of the PSE's options markets and market maker performance.[4]

Finally, the Exchange believes that it has adequate systems capacity that would be necessary if the Commission approves the proposed rule change, and, further, that the proposal will have no negative impact on the Exchange's Pacific Options Exchange Trading System ("POETS").

The PSE believes that the proposal is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, Section 6(b)(5), in that it is designed to facilitate transactions in securities and to protect investors and the public interest.[5]

The Commission believes that the proposal is designed to improve the quality of the PSE's options markets and the performance of PSE options market makers. Specifically, under the proposal, public customers will be assured order execution to a minimum depth of 20 contracts at the best disseminated bid or offer, which, in turn, may result in better executions of small customer orders by providing greater depth to the PSE's options markets. In addition, the proposal should encourage PSE market makers to become more competitive in making larger sized markets, thereby facilitating transactions in securities and contributing to a more free, open, and liquid market. The proposal may also attract greater customer order flow to the Exchange, which would further enhance market depth and liquidity and result in tighter options pricing spreads.

In its order granting permanent approval to the PSE's 10-up pilot program, the Commission noted that the Exchange had submitted a report concerning the operation and effectiveness of the 10-up program.[6] In its report, the Exchange stated that the 10-up rule had resulted in faster executions of public customer orders and had improved the quality of the Exchange's options market and market maker performance. The report also noted that the 10-up rule places greater obligations on market makers since they must either keep their markets updated or run the risk of having to fill a customer order based on a stale quote that may not be competitive under current market conditions. The Commission believes that the proposal to increase the 10-up guarantee to 20 contracts may continue to improve the performance of the PSE's market makers and produce better executions of small public customer orders.

In addition, the Commission believes that the proposal is designed to enhance fair competition among brokers and dealers and among exchange markets. Presently, the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the New York Stock Exchange, Inc. ("NYSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX"), all impose some form of 10-up requirement on their markets.[7] The Commission believes, as it has stated in the past, that the PSE is entitled to respond competitively to the actions of the other options exchanges in order to encourage brokerage firms and their customers to trade in PSE options and, where those options are multiple traded, to choose to route their orders to the PSE.[8]

[3] Currently, PSE Rule 6.86(d) provides that the order book official shall allocate among the market makers present at the trading post the balance of contracts necessary to provide an execution on 10 contracts if the response of members at a trading post is insufficient to provide a depth of 10 contracts. The Exchange proposes to amend paragraph (d) to replace the term "ten" with "twenty." In addition, the PSE proposes to replace the term "ten" with "twenty" in Commentaries .01, .02, and .03. Commentary .01 states that if the bid or offer being displayed as a disseminated market quote is on behalf of an order represented by a floor broker or the order book official, and is for less than 10 contracts, the trading crowd is obligated to buy or sell the balance of the contracts necessary to provide a depth of 10 contracts at the disseminated bid or offering price. Commentary .02 provides that a floor broker's failure to remove a bid or offer from the screen after the bid or offer has been filled or cancelled may result in the floor broker being held responsible for providing a depth of 10 contracts upon being present or returning to the trading crowd, and/or being subject to disciplinary action by the Exchange. Commentary .02 also provides that a market maker or floor broker who has caused a bid or offer to be disseminated, but who leaves the trading post without removing the bid or offer, may be held responsible for providing a depth of 10 contracts upon returning to the trading crowd, and/or being subject to disciplinary action by the Exchange. Commentary .03 states that market maker orders for less than 10 contracts that are represented at a trading post by a floor broker shall not be disseminated.

[4] *See* Securities Exchange Act Release No. 31824 (February 4, 1993), 58 FR 8078 (February 11, 1993) (order approving File No. SR–PSE–92–40) ("10-Up Approval Order").

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] *See* 10-Up Approval Order, *supra* note 4.

[7] *See* Amex Rule 958A, "Specialist Options Transactions," CBOE Rule 8.51, "Trading Crowd Firm Disseminated Market Quotes," NYSE Rule 758A, "Specialist Options Transactions," and PHLX Rule 1033, "Bids and Offers—Premium."

[8] *See* Securities Exchange Act Release No. 28021 (May 16, 1990), 55 FR 21131 (May 22, 1990) (order approving File No. SR–PSE–89–16).

Accordingly, the Commission finds that the proposal is consistent with Sections 11A(a)(1)(C) (ii) and (iv) of the Act because it will promote "fair competition among brokers and dealers" and "the practicability of brokers executing investors' orders in the best market."[9]

Moreover, although the Commission carefully scrutinizes discriminatory order execution practices, the Commission believes that limiting the 20 contract minimum to public customers furthers the purposes of the Act by helping to ensure that market makers' volume guarantees will not be exhausted by competitors to the detriment of public customers.[10]

The PSE has stated that its market maker system has sufficient liquidity to meet the 20-contract guarantee, and that the proposal will not require PSE market makers to assume undue risks. In this regard, the Commission notes that market makers' clearing firms guarantee their trades, and that the clearing firms are subject to Rule 15c3–1 under the Act. In addition, under PSE Rule 6.82(c)(8), Lead Market Makers ("LMMs") must maintain cash or assets in the amount of $100,000 or an amount sufficient to assume a position of 20 trading units of each security in which the LMM holds an appointment. Finally, under PSE Rule 6.86(d), an Order Book Official will allocate among market makers at the trading post the balance of contracts necessary to provide an execution on 20 contracts if there is insufficient response by members present at the trading post. In light of this, the Commission believes that the PSE floor should be able to adequately handle the 20-up requirement and that it will not place undue burdens or capital risks on the PSE's options market makers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PSE–94–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–26965 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78k–1 (1984).

[10] *See* Securities Exchange Act Release No. 34400 (July 19, 1994), 59 FR 38011 (July 26, 1994) (order approving File No. SR–PHLX–91–45).

[11] 15 U.S.C. 78s(b)(2) (1984).

[12] 17 CFR 200.30–3(a)(12) (1993).

[Investment Company Act Release No. 20655; 811–3243]

Equity Strategies Fund, Inc.; Notice of Application

October 25, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Equity Strategies Fund, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 28, 1994, and amended on August 3, 1994, and October 3, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 767 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company, organized as a corporation under the laws of the state of Maryland. On August 14, 1981, applicant registered under the Act and filed a registration statement on Form N–2. From February 25, 1982, when applicant commenced operations, through April 25, 1984, applicant was a closed-end, diversified management company. On April 25, 1984, applicant's shareholders voted to change its subclassification to "non-diversified" and approved the adoption of applicant's current investment objective and fundamental investment restrictions. On April 29, 1986, applicant's shareholders voted to change its subclassification to "open-end."

2. Applicant filed a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933 on June 9, 1986. Applicant's registration statement became effective on July 3, 1986. To the best of applicant's knowledge, public offering of its shares commenced on or about that date. On November 13, 1986, applicant's directors voted to cease the further offering of shares effective December 1, 1986, and applicant has not sold any shares since that date.

3. On August 9, 1993, applicant's board of directors authorized the Agreement and Plan of Reorganization (the "Reorganization Plan") and the Plan of Complete Liquidation and Dissolution of Applicant (the "Liquidation Plan"), recommended that applicant's shareholders vote in favor of the adoption and approval of same and authorized its officers to take all action necessary or advisable, including the filing of proxy materials, to effectuate the Reorganization and Liquidation Plans and to deregister applicant under the Act.

4. Applicant distributed a proxy statement relating to the Special Meeting of Stockholders to its shareholders and filed it with the Commission. At the meeting held March 21, 1994, the Reorganization and Liquidation Plans were approved by the holders of 1,206,695 shares, representing 53% of the shares of applicant entitled to be cast on the matter.

5. Applicant established a $1 million reserve fund (the "Reserve Fund") designated for the satisfaction of any liabilities of applicant which were unknown to applicant as of the closing date. Potential contingent liabilities include the possibility that the Internal Revenue Service or a state tax authority could assert that applicant had made inadequate provision for taxes on past transactions, or that applicant's net asset value had been erroneously computed. Although applicant is currently unaware of any such liabilities, the Reserve Fund was established to protect applicant's officers and directors, who otherwise would be personally liable for

such liabilities. On the three-year anniversary of the Closing Date, as defined below, any funds remaining in the Reserve Fund which are not required to satisfy any then outstanding liabilities will be distributed to applicant's shareholders of record based on each shareholder's *pro rata* ownership of applicant as of the Closing Date. The Reserve Fund constitutes a liquidating trust for tax and other purposes and will be administered by an independent trustee who is not an affiliated person of the Fund's investment adviser.

6. Pursuant to a Reorganization Plan dated as of August 26, 1993 by and between applicant and Nabors Industries, Inc. ("Nabors") whereby applicant transferred, effective April 5, 1994 (the "Closing Date"), substantially all of its assets to Nabors, applicant's shareholders received (i) 5.844 shares of common stock of Nabors per share of applicant, (ii) cash in lieu of any fractional shares of Nabors, and (iii) a *pro rata* interest, currently $.44 per applicant share, in the Reserve Fund, for a total net asset value ($39.16 per applicant share) equal to their *pro rata* ownership of applicant.

7. An application for an order exempting the transactions proposed in the Reorganization and Liquidation Plans from section 17(a) of the Act pursuant to section 17(b) of the Act and permitting such transactions pursuant to section 17(d) of the Act and rule 17d–1 thereunder was filed with the Commission on September 20, 1993. The Commission granted such order on February 1, 1994 (File Number 812–8592).

8. Applicant filed Articles of Transfer and Articles of Dissolution with the State of Maryland, on April 5, 1994 and April 26, 1994, respectively.

9. As of the date of the application, applicant has no debts or liabilities and is not a party to any litigation.

10. There are six shareholders of applicant who have not yet surrendered their stock certificates (although applicant has attempted and is continuing to attempt to contact such shareholders by telephone and letter). Accordingly, these shareholders have not yet received their stock certificates of Nabors. The stock certificates to which these shareholders are entitled are being held by the transfer agent designated by Nabors, who will release such certificates individually to each such shareholder upon receipt of notice from applicant that such shareholder has surrendered its stock certificates of applicant.

11. Expenses incurred in connection with the liquidation were borne by applicant, except for costs of Nabor's legal counsel in connection with negotiations of the Plans, which costs were borne by Nabors.

12. Applicant is current with respect to all filings required under the Act, including all N-SAR filings, and will make any final filings required by the Act.

13. Applicant has no assets and is not now engaged nor does it propose to engage in any business other than the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–26963 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20653; 812–7301]

Institutional Liquid Assets et al.; Notice of Application

October 25, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The taxable money market portfolios of Institutional Liquid Assets ("ILA"), Financial Square Trust ("FST"), Trust for Credit Unions ("TCU"), and Paragon Funds ("PF") (the taxable money market portfolios of ILA, FST, TCU and PF are referred to herein as the "Funds"; ILA, FST, TCU and PF are referred to herein as the "Trusts"), and any other registered investment company or series thereof that is a taxable money market fund for which Goldman, Sachs & Co., Goldman Sachs Funds Management, L.P. ("GSFM"), or Goldman Sachs Asset Management International ("GSAMI") serves as investment adviser in the future (the "Future Funds"), Goldman, Sachs & Co., Goldman Sachs Money Markets, L.P. ("GSMM"), GSFM, and GSAMI. The application is also being made on behalf of any successors to all or substantially all of the business, assets, or property of Goldman, Sachs & Co. or GSMM. Any such succession shall be solely by way of change of organization, such as incorporation, reincorporation, or reorganization as a partnership or similar entity.

RELEVANT 1940 ACT SECTIONS: Order requested under sections 6(c) and 17(b) for an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit the Funds and the Future Funds to engage in certain principal transactions with Goldman, Sachs & Co. and GSMM.

FILING DATE: The application was filed on April 20, 1989 and amended on August 17, 1993, February 17, 1994, August 19, 1994, and October 21, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. ILA, FS, TCU, and PF, 4900 Sears Tower, Chicago, Illinois 60606–6303. Goldman, Sachs & Co., 85 Broad Street, New York, New York 10004 and 32 Old Slip, 34th Floor, New York, New York 10005. GSMM, 85 Broad Street, New York, New York 10004. GSFM, 32 Old Slip, 34th Floor, New York, New York 10005. GSAMI, 140 Fleet Street, London EC4A 2BJ, England.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Trust is a no-load, diversified, open-end management investment company registered under the Act. Each Trust is a Massachusetts business trust and has as its investment objective maximizing current income to the extent consistent with the preservation of capital and the maintenance of liquidity by investing in high quality taxable money market instruments. Currently, Goldman, Sachs & Co. is the investment adviser and the principal underwriter of each Fund.

2. Goldman, Sachs & Co., GSFM, and GSAMI are each registered as investment advisers under the Investment Advisers Act of 1940

(Goldman, Sachs & Co., through its division Goldman Sachs Asset Management ("GSAM"), GSFM, and GSAMI may individually be referred to as an "Adviser" and collectively as "the Advisers").

3. Goldman, Sachs & Co., a registered broker-dealer, is one of the largest international investment banking and brokerage firms in the United States and is a major dealer in money market instruments (excluding commercial paper). Commercial paper is handled by GSMM, a subsidiary of The Goldman, Sachs Group, L.P. ("GS Group"),[1] which is a controlling person of Goldman, Sachs & Co. A registered broker-dealer, GSMM is one of the largest dealers in commercial paper. The broker-dealer operations at Goldman, Sachs & Co. are handled by approximately 1,360 professionals worldwide within the Fixed Income Division (including GSMM), with 750 professionals in New York. (Goldman, Sachs & Co., in its capacity as dealer in securities and financial instruments and as counterparty in repurchase agreement transactions, and GSMM are collectively referred to herein as "Goldman Sachs" or the "Dealers.")

4. Goldman, Sachs & Co., GSFM, and GSAMI are directly or indirectly partnership or corporate subsidiaries of GS Group. GS Group is a Delaware limited partnership with more than 150 general partners and over 90 limited partners, including certain institutional limited partners, and is a general partner of Goldman, Sachs & Co., with a 99 percent interest in the profits and losses thereof. GSFM is a Delaware limited partnership of which the general partner is a corporation wholly-owned directly by GS Group and the sole limited partner is GS Group. GSAMI is a English company indirectly wholly-owned by GS Group. Neither GSFM nor GSAMI currently act as investment adviser to a Fund, but may do so in respect of a Future Fund. The Advisers will maintain offices physically separate from Goldman Sachs.

5. The investment advisory operations for the Funds are handled by a group currently consisting of 10 persons (the "Funds Group Trading Desk") within GSAM. The personnel assigned to the Funds Group Trading Desk are exclusively devoted to the business and affairs of GSAM. Subject to the supervision of the Trustees of the Funds, the executive management of GSAM, the Investment Policy Committee (discussed below) and the Credit Department (discussed below), all portfolio selection and trading decisions made for the Funds are made by personnel assigned to the Funds Group Trading Desk. All portfolio managers responsible for the Funds are assigned to the Funds Group Trading Desk. Such personnel are also responsible for U.S. dollar-denominated short-term taxable and tax-exempt funds management for other GSAM clients, including tax-exempt money funds registered under the Act.

6. Personnel in the Funds Group Trading Desk are not responsible for the marketing or sales of the Funds' shares or other GSAM products, although from time to time they participate in solicitations for significant potential clients and client service. Because of their expertise in and knowledge of the markets for short-term, money market instruments, other GSAM personnel, and occasionally personnel from other divisions within Goldman Sachs, solicit their views on the viability (from the portfolio management perspective) of proposals for pooled investment vehicles involving such markets or instruments. Finally, Funds Group Trading Desk personnel, who are generally familiar with instruments structured to satisfy various provisions of rule 2a–7, are solicited from time to time by various dealers, including Goldman Sachs, for their views on the structure of new instruments designed to be eligible under the rule.

7. Credit analysis for the Funds Group Trading Desk, Goldman Sachs and other affiliates of GS Group is performed by the Credit Department. The Credit Department is a central department of Goldman, Sachs & Co. which performs securities credit analysis, counterparty risk, customer credit, and related issues. The Credit Department maintains a list of eligible instruments which is used by the Funds Group Trading Desk for portfolio management. The Funds Group Trading Desk is not authorized to purchase instruments not on this list.

8. In general, the Funds Group Trading Desk develops and implements portfolio investment strategies within a preselected average maturity range. The average maturity range is selected in a weekly "Investment Policy Committee" meeting (the "Committee"). The Committee determines the target average maturity range based on (a) Fundamental economic analysis and technical market data, (b) anticipated trends in monetary and fiscal policy and (c) anticipated customer activity. In connection with (a) and (b), personnel of the Funds Group Trading Desk solicit views of dealers, including Goldman Sachs, on economic and market developments. For example, such personnel routinely canvas other dealers and Goldman Sachs to determine the "market" consensus regarding pending economic data releases, anticipated changes in Federal Reserve policy, and the forecast gross supply of money market securities available for investment. The Committee is currently composed of seven GSAM employees (including personnel of the Funds Group Trading Desk, but no other portfolio management personnel) and one employee from the Investment Research Division of Goldman, Sachs & Co. This Goldman Sachs' employee's input in the process is limited to participation in the Committee's deliberations on economic policy outlook, as it pertains to the very narrow issues for which the Committee is responsible.

9. The Committee is not involved in review or approval of specific securities to be purchased, the terms of any transactions or the types of securities in which the Funds may invest. Security and sector selection is exclusively the responsibility of the portfolio managers, subject to the portfolio's prospectus and credit guidelines, and is entirely outside the Committee process. The Committee's decisions on average maturity ranges are made by consensus, and no member has a veto over the decisions made by the Committee. Once decisions are made, the Funds Group Trading Desk manages the Funds' average maturity ranges until the ranges are changed at a subsequent meeting of the Committee.

10. The Funds Group Trading Desk monitors daily the portfolios of each of the Funds and places purchase and sell orders and enters into other transactions for the Funds by monitoring market quotations and market information and placing orders with, or receiving orders from, salesmen or dealers at investment or commercial banking institutions. After a transaction has been completed, the Funds Group Trading Desk employee completes a trade ticket evidencing the transaction and its agreed-upon terms. The average weekly trading volume that the Funds Group Trading Desk effected for the Funds was approximately $23.3 billion for the twelve-month period ended July 1, 1992.

11. As indicated above, neither GSFM nor GSAMI currently manage any Funds. As a result, neither has established a unit corresponding to the Funds Group Trading Desk or to an

[1] GSMM Corp., the general partner of GSMM holding a 1% interest in the profits and losses thereof, is a corporation owned by 35 individual general partners of GS Group, in order that GSMM Corp. be accorded treatment under Subchapter S of the Internal Revenue Code. GS Group is the limited partner of GSMM with a 99% interest in its profits and losses

Investment Policy Committee. It has not been determined whether, if GSFM or GSAMI manage a Fund, either would do so, or alternatively whether GSFM and/or GSAMI would rely in whole or in part on GSAM's Funds Group Trading Desk and Investment Policy Committee. In any event, any analogue to the Funds Group Trading Desk or the Investment Policy Committee established by either GSFM or GSAMI would conform in all material respects with the respective unit described herein and would comply with all of the conditions to the order.

12. Applicants believe that the Advisers, on the one hand, and the Dealers, on the other hand, are factually independent of each other, as described in part by condition 7. Important among those elements are the facts that the compensation of no person assigned to the Advisers will depend on the volume or nature of trades with the Dealers; and neither of the Dealers will share with the Advisers any portion of the profits or losses on transactions associated with such trades.

13. GS Group is a large, multinational financial enterprise, the net profits or losses of which arise from combined profits and losses of many and disparate sources. As noted in condition 7, the general partners, including those primarily responsible for the Advisers, are allocated their respective percentages of such net profits or losses. In addition, employees may be awarded general firmwide bonuses or participate in deferred compensation plans the profit or loss on which depend on GS Group's firmwide profits or losses. Applicants do not believe the factual independence of the Advisers and the Dealers is affected by the allocation of firmwide profits and losses.

14. General partners of GS Group allocate among themselves specified percentages of GS Group's profits and losses, which are determined on a firmwide basis. Such percentages are generally reviewed and changes are agreed to on a biennial (alternate year) basis, although there occasionally may be interim changes.

15. Nonpartner employees may be paid firmwide bonuses measured by, for example, a percentage of normal, annual compensation or a number of weeks of normal compensation. Other nonpartner employees are compensated by reference to performance goals within their respective divisions or departments. For example, a GSAM portfolio manager may receive (or not receive) a bonus based on the comparison of the performance of the portfolios under his or her supervision to standard or specialized indices measuring the performance of similar securities or funds with similar investment objectives. A Fixed Income Division employee may receive (or not receive) his or her bonus based on a variety of subjective and objective performance factors during a pertinent time period.

16. In addition to nonpartner employees' bonuses, various operating subsidiaries of GS Group, including Goldman, Sachs & Co., GSMM, and GSAMI, offer to certain qualified professionals the opportunity to participate in unfunded deferred compensation plans the profit (or loss) on which is determined on the basis of GS Group's firmwide profits and losses. The formula pursuant to which participants' contributions are allocated profits or losses is determined annually by GS Group on the basis of then current market conditions and applies uniformly to all contributions made in that plan year. Qualifying employees of the Advisers and the Dealers may be participants in these plans.

17. The portfolio securities in which the Funds invest consist of taxable money market instruments and repurchase agreements. Practically all trading in money market instruments takes place in over-the-counter markets consisting of groups of dealer firms which are primarily major securities firms or large banks. Money market securities are generally traded in round lots of $1,000,000 on a net basis and do not normally involve either brokerage commissions or transfer taxes. The cost of the Funds' portfolio transactions consists primarily of dealer or underwriter spreads. Spreads vary among money market instruments but generally do not exceed 12 basis points (.12%). It has been the experience of the Funds Group Trading Desk that spreads have narrowed and there is not a great deal of variation in the spreads charged by the various dealers, except during turbulent market conditions.

18. The money market consists of an elaborate telephone communication network among dealer firms, principal issuers of money market instruments and principal institutional buyers of such instruments. The dealer usually acts as principal for his own account. Because the money market is a dealer market, rather than an auction market, there is not a single obtainable price for a given instrument that prevails at any given time. Price is determined by negotiations between traders. Money market instruments are generally sold by each participating dealer from inventory and the quotations of the dealers will vary depending upon a number of factors. Only customers of the dealer may obtain quotations and trade on them.

19. Because of the variety of types of money market instruments, the money market tends to be somewhat segmented. The markets for the various types of instruments will vary in terms of price, volatility, liquidity, and availability. Although the rates for the different types of instruments tend to fluctuate closely together, there are significant differences in yield among the various types of instruments, and even within a particular type, depending upon the maturity date and the quality of the issuer. Moreover, from time to time segmenting exists among money market securities with the same maturity date and rating. The segmenting is based on such factors as whether the issuer is an industrial or financial company and whether the issuer is domestic or foreign. Because dealers tend to specialize in certain types of money market instruments, the particular needs of a potential buyer or seller in terms of type of security, maturity, or quality may limit the number of dealers who can provide best price and execution. Hence, with respect to any given type of instrument, there may be only a few dealers who can be expected to have the instrument in inventory (or add the instrument to inventory) and be in a position to quote a favorable price.

20. Goldman Sachs is among the largest major dealers in the taxable money market. As of November 1992, Goldman Sachs was the dealer in more commercial paper programs for U.S. industrial companies and their captive finance subsidiaries rated A–1/P–1 or better by Standard & Poor's Corporation or Moody's Investors Service, Inc. than any other dealer. Goldman Sachs' ranking in the repurchase agreement market has in recent years fluctuated between second and fifth depending on economic factors, the amount of its own commercial paper outstanding, and its level of outstanding short-term borrowings. Goldman Sachs has also consistently been one of the leading dealers in medium-term notes ("MTNs"). Within the maturities permitted by rule 2a–7, the longer term investment alternatives for the Funds are fewer than the shorter term investment alternatives, since commercial paper cannot be issued with a maturity greater than nine months, and bankers' acceptances cannot be issued with a maturity greater than six months. Accordingly, MTNs with nine months to one year maturities are important to the Funds as alternative investments to United States

Government securities and bank certificates of deposit.

21. Since mid-1987, several dealers have terminated or significantly reduced their money market dealer activities. These terminations and reductions have had the effect of decreasing the liquidity in the money market. Goldman Sachs has remained committed to the taxable money market and has moved to fill the void left by departing dealers. As the number of dealers with whom the Funds can transact business decreases, it becomes more important for the Funds to have meaningful access to all of the major dealers in the money market, particularly Goldman Sachs, given its leading role in the money market.

22. Subject to the general supervision of the Trustees of the Trusts, GSAM is responsible for portfolio decisions and the placing of the Funds' portfolio transactions. The Funds have no obligation to deal with any dealer or group of dealers in the execution of their portfolio transactions. When placing orders, an investment adviser must attempt to obtain the best net price and the most favorable execution of its orders. In doing so, it takes into account such factors as price, the size, type, and difficulty of the transaction involved, and the firm's general execution and operation facilities.

Applicants' Legal Analysis

1. Applicants request an order pursuant to sections 6(c) and 17(b) exempting certain transactions from the provisions of section 17(a) so as to permit Goldman Sachs, acting as principal, to sell to or purchase from the Funds and the Future Funds certain money market instruments, subject to the conditions set forth below.

2. Because of the above-described affiliations of Goldman Sachs with the Funds, the Funds are currently prohibited from conducting portfolio transactions with Goldman Sachs in transactions in which Goldman Sachs acts as principal. Section 17(a) prohibits an affiliated person or principal underwriter of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property, subject to exceptions not here relevant. Section 17(b) provides, however, that the SEC, upon application, may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair, and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company and with the general purposes of the Act.

3. Section 6(c) provides that the SEC may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. The rationale behind the proposed order is based upon the decreased liquidity in the money market, the growing and significant role played in the money market by Goldman Sachs, and the special requirements of the Funds with respect to their portfolio transactions. In particular, applicants note the following:

(a) With over $15.5 billion invested in money market instruments, the Funds are major buyers and sellers in the money market with a strong need for a constant flow of large quantities of high quality money market instruments. Applicants believe that access to such a major dealer as Goldman Sachs in these markets increases the Funds' ability to obtain suitable portfolio securities.

(b) The policy of the Funds of investing in securities with short maturities, combined with the active portfolio management techniques employed by GSAM, will often result in high portfolio activity and the need to make numerous purchases and sales of securities and instruments. Such high portfolio activity makes the need to obtain suitable portfolio securities and best price and execution especially compelling.

(c) Goldman Sachs is such a major factor in the money market that being unable to deal directly with it may, upon occasion, deprive the Funds of obtaining best price and execution.

(d) The money market is highly competitive and removing Goldman Sachs from the dealers with which the Funds may conduct principal transactions may indirectly deprive the Funds of obtaining best price and execution even when the Funds trade with unaffiliated dealers.

5. Applicants believe that the requested order will provide the Funds with access to the money market, which is necessary to carry out the policy of each of the Funds of obtaining the best price and execution in effecting portfolio transactions, and will provide the Funds with important new information sources in the money market, thereby working to the benefit of the shareholders of the Funds. Applicants believe that the transactions contemplated by the application are identical to those in which they are currently engaged except for the proposed participation of the Dealers therein and that such transactions are consistent with the policies of the Funds as recited in their registration statements and reports filed under the Act.

6. Applicants believe that the procedures set forth with respect to transactions with Goldman Sachs are structured in such a way as to insure that such transactions will be, in all instances, reasonable and fair, and will not involve overreaching on the part of any person concerned, and that such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. *Transactions Subject to the Exemption*—The exemption shall be applicable to principal transactions in the secondary market and primary or secondary fixed price dealer offerings not made pursuant to underwriting syndicates. The principal transactions which may be conducted pursuant to the exemption shall be limited to transactions in *Eligible Securities* meeting the portfolio maturity and quality requirements of paragraphs (c)(2) and (c)(3) of rule 2a–7, provided that: [2]

(a) No Fund [3] shall make portfolio purchases pursuant to the exemption that would result in the Fund investing pursuant to the exemption more than 2% of its *Total Assets* in securities which, when acquired by the Fund (either initially or upon any subsequent roll over) were *Second Tier Securities*; provided that any Fund may make portfolio sales of *Second Tier Securities* pursuant to the exemption without regard to the percentage of its *Total Assets* involved:

(b) The exemption shall not apply to an *Unrated Security* other than (1) A *Government Security*; or (ii) a security that is a rated security and is the subject

[2] Italicized terms are defined as set forth in paragraph (a) of rule 2a–7, unless otherwise indicated.

[3] References to the Funds include the Future Funds.

of an external credit support agreement that was not in effect when the security (or the issuer) was assigned its rating, provided that (A) the issuer of the external credit support agreement is rated with respect to a class of *Short-term* debt obligations (or any security within that class) that is now comparable in priority and security with the credit support agreement, in one of the two highest rating categories for *Short-term* debt obligations, (B) the external credit support agreement is irrevocable, unconditional, and has terms coextensive with those of the underlying security, and (C) for the purposes of the exemption, the security covered by the external credit support agreement will be deemed to have a rating no higher than the rating described in subparagraph 2(b)(ii)(A).

(c) The exemption shall not apply to any security, other than a repurchase agreement, issued by Goldman, Sachs & Co. or any affiliated person thereof or to any security subject to a *Put* or *Demand Feature* issued by Goldman, Sachs & Co. or any affiliated person thereof.

(d) The exemption shall not apply to any *Asset Backed Security* unless it is an *Eligible Security*.[4]

2. *Repurchase Agreement Requirements*—The Funds may engage in repurchase agreements with a Dealer only if the Dealer has: (a) Net capital, as defined in rule 15c3–1 under the Securities Exchange Act of 1934, of at least $100 million and (b) a record (including the record of predecessors) of at least five years continuous operations as a dealer, during which time it engaged in repurchase agreements relating to the kind of security subject to the repurchase agreement. The Dealers shall furnish the Advisers with financial statements for their most recent fiscal year and the most recent semi-annual financial statements made available to their customers. The Advisers shall determine that the Dealer complies with the above requirements and with the repurchase agreement guidelines adopted by the Board of Trustees of each Trust. Each repurchase agreement will be *Collateralized Fully*.

3. *Volume Limitations on Transactions*—Transactions conducted pursuant to the exemption shall be limited to no more than 25% of (a) The purchases or sales, as the case may be, by each Fund of *Eligible Securities* other than repurchase agreements; and (b) the purchases or sales, as the case may be, by each Dealer of *Eligible Securities* other than repurchase agreements. Transactions conducted pursuant to the exemption shall be limited to no more than 10% of (a) The repurchase agreements entered into by each Fund and (b) the repurchase agreements transacted by the Dealer. These calculations shall be measured on an annual basis (the fiscal year of each Fund and of each Dealer) and shall be computed with respect to the dollar volume thereof.

4. *Information Required to Document Compliance With Price Tests*—Before any transaction may be conducted pursuant to the exemption, the Funds or the Advisers must obtain such information as they deem necessary to determine that the price test (as defined in condition (5) below) applicable to such transaction has been satisfied. In the case of purchase or sale transactions, the Funds or the Advisers must make and document a good faith determination with respect to compliance with the price test based upon current price information obtained through the contemporaneous solicitation of bona fide offers in connection with the type of security involved (the same instrument, credit rating, maturity and segment, if any, but not necessarily the identical security or issuer). With respect to prospective purchases of securities, these dealers must be those who have, in their inventories, money market securities of the categories and the types desired and who are in a position to quote favorable prices with respect thereto. With respect to the prospective disposition of securities, these dealers must be those who, in the experience of the Funds and the Advisers, are in a position to quote favorable prices. Before any repurchase agreements are entered into pursuant to the exemption, the Funds or the Advisers must obtain and document competitive quotations from at least two other dealers with respect to repurchase agreements comparable to the type of repurchase agreement involved, except that if quotations are unavailable from two such dealers only one other competitive quotation is required.

5. *Price Tests*—In the case of purchase and sale transactions, a determination will be required in each instance, based upon the information available to the Funds and the Advisers, that the price available from the Dealer is at least as favorable as that available from other sources. In the case of "swaps" involving trades of one security for another, the price test shall be based upon the transaction viewed as a whole, and not upon the two components thereof individually. With respect to transactions involving repurchase agreements, a determination will be required in each instance, based on the information available to the Funds and the Advisers, that the income to be earned from the repurchase agreement is at least equal to that available from other sources.

5. *Permissible Dealer Spread*—The Dealers' spreads in regard to any transaction with the Funds will be no greater than their customary dealer spreads, which in turn will be consistent with the average or standard spread charged by dealers in money market securities for the type of security and the size of transaction involved.

7. *Parties Must be Factually Independent*—The Advisers, on the one hand, and the Dealers, on the other, will operate on different sides of appropriate Chinese Walls with respect to the Funds and *Eligible Securities*. The Chinese Walls will include all of the following characteristics, and such others as may from time to time be considered reasonable by the Dealers and the Advisers to facilitate the factual independence of the Advisers from the Dealers.

(a) Each of the Advisers will maintain offices physically separate from those of Goldman Sachs.

(b) The compensation of persons assigned to any of the Advisers (*i.e.*, executive, administrative or investment personnel) will not depend on the volume or nature of trades effected by the Advisers for the Funds with the Dealers under this exemption, except to the extent that such trades may affect the profits and losses of The Goldman Sachs Group, L.P. and Goldman, Sachs & Co. (which includes those of GSMM).

(c) Neither the Fixed Income Division of Goldman, Sachs & Co. nor GSMM will share any of their respective profits or losses on such transactions with any of the Advisers, provided that the allocation of the profits of The Goldman Sachs Group, L.P. and Goldman, Sachs & Co. (which includes those of GSMM) to general partners thereof, and the determination of general firmwide compensation to nonpartners, will be unaffected by this undertaking.

(d) Personnel assigned to the Funds Group Trading Desk will be exclusively devoted to the business and affairs of one or more of the Advisers.

(e) Personnel assigned to the Fixed Income Division and GSMM will not participate in or otherwise seek to influence the Funds Group Trading Desk other than in the normal course of sales and dealer activities of the same nature as are simultaneously being

[4] The terms "Asset Backed Security" and "Eligible Security" as used in condition 1(d) refer to those terms as defined in paragraphs (a)(2) and (a)(9)(iii)(C) of the proposed revisions to rule 2a–7, as currently proposed and as they may be reproposed, adopted, or amended. *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 19959 (Dec. 17, 1993).

carried out with respect to nonaffiliated institutional clients. Each Adviser, on the one hand, and Goldman, Sachs & Co. and GSMM, on the other, may nonetheless maintain affiliations other than with respect to the Funds, and in addition with respect to the Funds as follows:

(i) GSAM has organized and any other Adviser may organize an Investment Policy Committee the members of which include Funds Group Trading Desk personnel, other GSAM personnel and one representative from the Investment Research Department of Goldman, Sachs & Co. This non-GSAM member's input on the Committee will be limited solely to expressions of his or her opinion on interest rate and similar economic matters, and will be included in the Committee only to the extent of considering and ratifying the portfolio managers' average maturity recommendations. The Investment Policy Committee will develop recommendations only on average maturity ranges and will not develop recommendations on specific securities or on types of securities.

(ii) Funds Group Trading Desk personnel may rely on research, including credit analysis and reports prepared by the Goldman Sachs Credit Department, which is responsible firmwide for credit analysis and counterparty credit risk evaluations and recommendations.

(iii) Members of the Management Committee of Goldman, Sachs & Co. and The Goldman Sachs Group, L.P. and certain other senior executives with responsibility for overseeing operations of various divisions, subsidiaries and affiliates of Goldman Sachs are not precluded from exercising those functions over the Advisers because they oversee the Fixed Income Division and GSMM as well, provided that such persons shall not have any involvement with respect to proposed transactions pursuant to the exemption and will not in any way attempt to influence or control the placing by the Funds or any Adviser of others in respect of *Eligible Securities* with Goldman Sachs.

8. *Record-keeping Requirements*—The Funds and the Advisers will maintain such records with respect to those transactions conducted pursuant to the exemption as may be necessary to confirm compliance with the conditions to the requested relief. In this regard:

(a) Each Fund shall maintain an itemized daily record of all purchases and sales of securities pursuant to the exemption, showing for each transaction: the name and quantity of securities; the unit purchase or sale price; the time and date of the transaction; whether such security was a *First Tier Security* or a *Second Tier Security;* and the name of the Dealer from whom purchased or to whom sold. Such records also shall, for each transaction, document two quotations received from other dealers for comparable securities, including: The names of the dealers; the names of the securities; the prices quoted; the times and dates the quotations were received; and whether such securities were *First Tier Securities* or *Second Tier Securities.*

(b) Each Fund shall maintain a ledger or other record showing, on a daily basis, the percentage of the Fund's *Total Assets* represented by *Second Tier Securities* acquired from the Dealers.

(c) Each Fund shall maintain records sufficient to verify compliance with the volume limitations contained in condition (3), above. The Dealers will provide the Funds with all records and information necessary to implement this requirement.

(d) Each Fund shall maintain records sufficient to verify compliance with the repurchase agreement requirements contained in condition (2), above.

The records required by this condition (8) will be maintained and preserved in the same manner as records required under rule 31a–1(b)(1).

9. *Goldman Sachs Guidelines*—The legal department of Goldman, Sachs & Co. or such other department responsible for compliance (the "Legal Department") will prepare guidelines for personnel of the Dealers and the Advisers to make certain that transactions conducted pursuant to the exemption comply with the conditions set forth therein, and that the parties generally maintain arm's length relationships. In the training of personnel of the Dealers, particular emphasis will be given to the fact that the Funds are to receive rates as favorable as other institutional purchasers buying the same quantities. The Legal Department will periodically monitor the activities of the Dealers and the Advisers to make certain that the conditions set forth in the exemption are adhered to.

10. *Audit Committee Guidelines*—The Audit Committees of the Trustees of the Trusts, consisting of the noninterested Trustees, will prepare and periodically review and update guidelines for the Funds and the Advisers to ensure that transactions conducted pursuant to the exemption comply with the conditions set forth therein and that the above procedures are followed in all respects. The respective Audit Committees will periodically monitor the activities of the Funds and the Advisers in this regard to ensure that these matters are being accomplished.

11. *Scope of Exemption*—Applicants expressly acknowledge that any order issued on the application would grant relief from section 17(a) of the Act only, and would not grant relief from any other section of, or rule under, the Act including, without limitation, rule 2a-7.

12. *Board Review*—The Trustees of each Trust, including a majority of the noninterested Trustees, have approved the Fund's participation in transactions conducted pursuant to the exemption and have determined that such participation by the Fund is in the best interests of the Fund and its unitholders. The minutes of the meeting of the Board of Trustees at which this approval was given reflect in detail the reasons for the Trustees' determination. The Trustees will review no less frequently than annually the Fund's participation in transactions conducted pursuant to the exemption during the period year and determine whether the Fund's participation in such transactions continues to be in the best interests of the Fund and its unitholders. The minutes of the meetings of the Trustees of each Trust at which this determination is made will reflect in detail the reasons for the Trustees' determination.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan K. Katz,

Secretary.

[FR Doc. 94–26964 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20657; File No. 812–9144]

Salomon Brothers Capital Fund, Inc. et al.; Notice of Application

October 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the Act").

APPLICANTS: Salomon Brothers Capital Fund, Inc., Salomon Brothers Investors Fund, Inc., and Salomon Brothers Series Funds, Inc. (collectively, the "Funds"), Salomon Brothers Asset Management, Inc. (the "Adviser"), Salomon Brothers, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act exempting applicants from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain investment companies to issue multiple classes of shares representing interests in the same portfolios of securities and assess, and under certain circumstances waive, a contingent deferred sales charge ("CDSC") on redemptions of shares.

FILING DATES: The application was filed on August 3, 1994, and amended on September 28, 1994, and October 7, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicants, c/o Michael S. Hyland, Salomon Brothers Asset Management, Inc., Seven World Trade Center, New York, New York 10048; copy to Gary Schpero, Esq., Simpson Thatcher & Bartlett, 425 Lexington Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Bradley W. Paulson, Staff Attorney, at (202) 942–0147 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

A. Multi-Class Distribution System

1. Each Fund is an open-end management investment company registered under the Act. The term "Fund" refers to the registered investment company while the term "Portfolio" refers to a particular portfolio of a Fund. For a single series investment company, the terms "Fund" and "Portfolio" are interchangeable. The Adviser provides investment advisory services to each Fund. The Distributor acts as distributor for the shares of each Fund. Applicants request that the relief granted extend to any open-end investment company that is or may become a member of Salomon Brothers Asset Management, Inc.'s "group of investment companies" as defined in rule 11a–3 under the Act. Existing Funds that intend to rely on the requested order have been named as applicants.

2. Applicants propose to establish a multiple class distribution system. Each Portfolio proposes to offer investors the option of purchasing shares that are either subject to a conventional front-end sales load ("Front-End Option"), subject to a CDSC ("Deferred Option"), or not subject to any such sales charge. Shares offered pursuant to any of these options could be offered in conjunction with a rule 12b–1 plan or non-rule 12b–1 shareholder services plan. The 12b–1 plans and shareholder services plans collectively are referred to as the "Plans." The sum of any initial sales charge, asset based sales charge, and CDSC will not exceed the maximum sales charge provided for in article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

3. Under the proposed distribution system, a Fund (on behalf of a Portfolio) or the Fund's distributor may enter into agreements with service agents for services pursuant to a 12b–1 plan or pursuant to a shareholder services plan. The expense of payments made pursuant to a 12b–1 plan agreement or a shareholder services plan agreement ("Plan Payments") will be borne entirely by the beneficial owners of the class to which the particular agreement relates.

4. A Portfolio's gross income will be allocated pro rata to each class on the basis of the net assets of each class. Expenses incurred by a Fund that are not attributable to a particular Portfolio of the Fund or to a particular class of a Portfolio ("Fund Expenses"), and expenses incurred by a particular Portfolio of a Fund that are not attributable to any particular class of the Portfolio ("Portfolio Expenses") will be allocated to each class on the basis of relative net assets. Expenses specifically attributable to a particular class of a Portfolio ("Class Expenses") will be allocated directly to such class. Class Expenses will consist only of those expenses specified in condition one, below. Because Plan Payments and Class Expenses will be borne by the class to which they are attributable, the net investment income of (and dividends payable to) the classes may differ. As a result, the net asset value per share of different classes may differ for Portfolios that do not declare dividends daily.

5. Under the proposed distribution system, each Portfolio's shares, regardless of class, will represent a pro rata interest in its portfolio securities and will have identical voting, dividend, liquidation, and other rights, preferences, powers, restrictions, limitations, qualifications, designations, terms, and conditions, except that: (a) each class will have a different designation; (b) each class will bear its own Plan Payments and Class Expenses; (c) only shareholders of affected classes will be entitled to vote on matters pertaining to the 12b–1 plan and 12b–1 plan agreements relating to such class; (d) each class will have different exchange privileges; and (e) certain classes will have a conversion feature.

6. Shares of each class may be exchanged only for shares of the same class in another Portfolio. The exchange privileges will operate in accordance with rule 11a–3 under the Act.

B. The CDSC

1. Investors choosing the Deferred Option will purchase shares at net asset value, without the imposition of a sales load at the time of purchase, but subject to a CDSC that decreases over time. A CDSC will not be imposed on redemptions of Deferred Option shares purchased more than a specified period before the redemption, or shares derived from reinvestment of dividends and distributions. No CDSC will be imposed on any amount that represents an increase in the value of the Deferred Option shares resulting from capital appreciation above the amount paid for such shares. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions; then of amounts representing the increase in net asset value above the total amount of payments for the purchase of Deferred Option shares currently held by the shareholder; and finally, of other shares held by the shareholder for the longest period of time. This order of redemption will result in a charge, if any, imposed at the lowest possible rate.

2. After Deferred Option shares are no longer subject to a CDSC, the shares (except those purchased through reinvestment of dividends and other distribution paid in respect of Deferred Option shares of such Portfolio) will automatically convert to non-CDSC shares of such Portfolio at the relative net asset values of the two classes. For purposes of conversion to Front-End

Option shares, all shares in a shareholder's Portfolio account that were purchased through the reinvestment of dividends and other distributions paid in respect of Deferred Option shares (and which have not converted to Front-End Option shares) will be considered to be held in a separate sub-account. Each time any Deferred option shares in the shareholder's Portfolio account (other than those in the sub-account referred to in the preceding sentence) convert to Front-End Option shares, a pro rata portion of the Deferred Option shares then in the sub-account also will convert to Front-End Option shares. The portion will be determined by the ratio that the shareholder's Deferred Option shares converting to Front-End Option shares bears to the shareholder's total Deferred Option shares not acquired through dividends and distributions.

3. Applicants request relief to permit each Fund to waive or reduce the CDSC under certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 under the Act.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of multiple classes of shares representing interests in a Fund's Portfolios could be deemed: (A) to result in a "senior security" within the meaning of section 18(g) and to be prohibited by section 18(f)(1), and (B) to violate the equal voting provisions of section 18(i). Applicants believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowings, and does not affect the Funds' existing assets or reserves. The proposed arrangement also will not increase the speculative character of the shares of a Fund.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to permit the Funds to assess and, under certain circumstances, waive a CDSC on redemptions of shares.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Portfolio, and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Portfolio will related solely to: (a) the impact of the disproportionate Plan Payments; (b) the method of allocating certain Class Expenses, which are limited to (i) transfer agent fees as identified by the transfer agent as being attributable to a specific class and any shareholder servicing costs not covered by a shareholder services plan; (ii) printing and postage expenses related to preparing and distributing to the shareholders of a specific class materials such as shareholder reports, prospectuses and proxies; (iii) Blue Sky registration fees incurred by a class; (iv) SEC registration fees incurred by a class; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class; (vii) professional fees relating solely to such class; (viii) directors' fees, including independent counsel fees, incurred as a result of issues relating to one class, and (ix) shareholder meeting expenses for meetings of a particular class; (c) the fact that the class will vote separately with respect to any matter specifically affecting that class, including without limitation rule 12b–1 distribution plans and shareholder services plans, except as provided in condition sixteen below; (d) the different exchange privileges of the classes of shares; (e) designation of each class of shares of the Portfolio; and (f) certain classes will have a conversion feature. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocable to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The directors of each Fund, including a majority of the independent directors, will approve the system of the offering of the various classes of shares. The minutes of the meetings of the directors regarding deliberations of the directors with respect to the approvals necessary to implement the multi-class arrangement for any Portfolio will reflect in detail the reasons for the directors' determinations that the system is in the best interests of that Portfolio and its shareholders.

3. On an ongoing basis, the directors of each Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor such Fund for the existence of any material conflicts between the interests of the classes of outstanding shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and Distributor of each Fund will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser and Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The directors of each Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In such statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

5. Dividends paid with respect to each class of shares of a Portfolio, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Plan Payments and Class Expenses applicable to a class will be borne exclusively by that class.

6. Any shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. The methodology and procedures for calculating the net asset value, dividends, and distributions of the various classes, and the proper allocation of expenses among the classes, have been reviewed by an expert (the "Expert"). The Expert has rendered a report to applicants, a copy of which has been provided to the staff of the SEC. The report states that such methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. The Expert or an appropriate substitute Expert will monitor, on an ongoing basis, the manner in which the calculations and allocations are being made and, based on that review, will render at least annually a report to each Fund that the

calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Fund (which each Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to a Fund for such work papers by a senior member of the SEC's Divisions of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrative or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation," and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in the AICPA's SAS No. 70, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares. This representation has been concurred with by the Expert in the initial report referred to in condition seven, above, and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition seven. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

9. The prospectus of each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another.

10. Each Portfolio will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, conversion features and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Portfolio will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain in the statement of assets and liabilities and statement of operations information related to the Portfolio as a whole generally and not on a per class basis. Each Portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Portfolio. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it also will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Portfolio's net asset value and public offering price will present each class of shares separately.

11. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Fund to conform to these standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of each Fund with respect to the multi-class arrangement will be set forth in guidelines that will be furnished to the directors as part of the materials setting forth the duties and responsibilities of the directors.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that may be made pursuant to a 12b–1 plan or a shareholder services plan in reliance on the exemptive order.

14. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the directors of the relevant Fund, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to such Fund's directors, and such Fund's directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

15. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the National Association of Securities Dealers, Inc.'s Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject before the conversion.

16. If a Fund adopts or implements any amendment to a rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under a plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. Such Fund's directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed before implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by such Fund's directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. A New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that such Fund's directors reasonably believe will not be subject to federal taxation. In accordance with condition three, any additional cost associated with the creation, exchange, or conversion of New Target Class shares or New Purchase Class shares shall be borne solely by the Adviser and Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27040 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No 20660; 812–8586]

The Galaxy Fund, et al.; Notice of Application

October 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Galaxy Fund (the "Trust"), Fleet Investment Advisors, Inc. (the "Advisers"), and Fleet Securities, Inc. ("Fleet Securities").

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c), 10(f), and 17(b) from sections 10(f) and 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to let the Trust's Rhode Island Municipal Bond Fund (the "Portfolio") purchase certain debt securities issued by the State of Rhode Island from Fleet Securities when such securities are underwritten solely by Fleet Securities or when Fleet Securities is a member of the underwriting syndicate. The order also would let the Portfolio purchase such securities from a syndicate manager of an underwriting syndicate of which Fleet Securities is a member when such securities are designated as group sales.

FILING DATES: The application was filed on September 20, 1993, and amended on February 10, 1994, May 6, 1994, and June 30, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. The Trust, 440 Lincoln Street, Worcester, Massachusetts 01605–1959. The Adviser, 45 East Avenue, Rochester, New York 14604. Fleet Securities, 14 Wall Street, 27th Floor, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company organized as a Massachusetts business trust. The Portfolio is a series of the Trust that has not yet commenced operations. The Adviser will act as investment adviser to the Portfolio. The Adviser is a wholly-owned subsidiary of Fleet Financial Group, Inc. ("Fleet Financial"), a multi-bank holding company.

2. The Portfolio's investment objective is to seek as high a level of current interest income exempt from federal income tax, and, to the extent possible, from Rhode Island personal income tax, as is consistent with relative stability of principal. To achieve this objective, the Portfolio's assets will be invested in debt securities of the State of Rhode Island, its political sub-divisions, authorities, agencies, instrumentalities, and corporations, the interest on which is exempt from Federal and Rhode Island personal income taxes ("Rhode Island Tax-Exempt Securities"), and in debt securities of other governmental issuers such as Puerto Rico, the interest on which is tax-exempt.

3. Fleet Securities, a whooly-owned subsidiary of Fleet Financial, is one of the top three underwriters in most types of Rhode Island Tax-Exempt Securities based on both dollar volume and number of new issues. From 1988 through 1993, Fleet Securities served as underwriter of approximately $5.1 billion in principal amount of Rhode Island Tax-Exempt Securities. This number represented approximately 57% of the total dollar amount, and approximately 76% of the total number, of new issues of Rhode Island Tax-Exempt Securities during those years.

4. Applicants assert that the supply of Rhode Island Tax-Exempt Securities in the secondary market historically has been limited, both as to the number of available issues and their size. Even when the amount available in the secondary market is relatively high, many of the issues available may be unsuitable for purchase by the Portfolio due to their credit quality or other characteristics. Consequently, applicants have an increased need to acquire Rhode Island Tax-Exempt Securities in underwritten offerings.

5. Applicants request relief from: (a) section 17(a) to permit the Portfolio to purchase Rhode Island Tax-Exempt Securities from Fleet Securities when such securities are underwritten solely by Fleet Securities; (b) sections 17(a) and 10(f) to permit the Portfolio to purchase Rhode Island Tax-Exempt Securities from Fleet Securities when Fleet Securities is a member of an underwriting syndicate; and (c) sections 17(a) and 10(f) to permit the Portfolio to purchase Rhode Island Tax-Exempt Securities from a syndicate manager when such securities are designated as group sales. The requested order would not permit principal transactions between Fleet Securities and the Portfolio in other securities or for Rhode Island Tax-Exempt Securities sold in the secondary market.

6. A "group order" is an order submitted to an underwriting syndicate which benefits all members of the syndicate according to their percentage participation in the syndicate. A group order may be distinguished from a "designated order," in which the investor designates two or more members of the syndicate to retain that portion of the commission not retained by the syndicate manger(s), and from a "member order," in which an investor places an order directly with a member of the syndicate that retains that portion of the commission not retained by the manager. Group orders may be filled "net" (the syndicate retains the entire commission) or "less the concession" (a dealer who is not a member of the syndicate receives part of the commission). An investor who places a "group net order" has no power to designate particular members of the syndicate to receive that portion of the commission not retained by the syndicate manager(s). If an offering is oversubscribed, "group net orders" are the first orders to be filled. Applicants believe that a significant portion of all orders submitted for oversubscribed new issues of Rhode Island Tax-Exempt Securities are submitted as group net orders. Consequently, the Portfolio must be able to place group net orders to obtain its proper share of oversubscribed new issues. "Group sales" result from group orders.

7. Although the terms and conditions of a new issue of tax-exempt securities may be negotiated between the issuer and the underwriters, the market for

Rhode Island Tax-Exempt Securities is very competitive and the yield and price of the securities must be satisfactory to the issuer as well as to potential purchasers to consummate an offering. The issuer and the underwriters have access to current information about comparable yields and prices commanded by contemporary new issues of similar quality and maturity in Rhode Island and throughout the country, and to information about yields and market prices of outstanding Rhode Island Tax-Exempt Securities. Because the pricing of each new issue is governed by the disciplines of yield and price that exist in a competitive market, applicants believe that the pricing of securities purchased in reliance on the requested order will be fair notwithstanding the dominant position of Fleet Securities in the market for Rhode Island Tax-Exempt Securities.

8. All the transactions conducted under the requested order will comply with the provisions of rule 10f–3, other than paragraph (f). In addition, the Adviser, Fleet Securities, Fleet Financial and any affiliated persons thereof, and all other entities for which investment decisions are made by the Adviser, Fleet Securities, Fleet Financial, and/or affiliated persons thereof ("Related Purchasers") will not in the aggregate purchase more than the greater of 4% or $500,000, but in no event more than 10%, of any class of an issue of Rhode Island Tax-Exempt Securities purchased pursuant to the requested order. As a result, any new issue of Rhode Island Tax-Exempt Securities will have to be made on such terms and conditions, including the price, as are acceptable in the new issue market.

Applicants' Legal Analysis

1 Section 2(a)(3) defines the term "affiliated person of another person" to include, in relevant part, (a) any person directly or indirectly controlling, controlled by, or under common control with such other person; and (b) if such other person is an investment company, any investment adviser thereof. Because Fleet Securities and the Adviser are under the common control of Fleet Financial, they are affiliated persons of each other within the meaning of section 2(a)(3).

2. Section 10(f), in relevant part, prohibits an investment company from purchasing securities from an underwriting syndicate in which an affiliate of the investment company's investment adviser acts as a principal underwriter. Under section 10(f), the SEC may exempt any transaction or class of transactions from the prohibitions of section 10(f) if such exemption is consistent with the protection of investors. Rule 10f-3 permits purchases otherwise prohibited by section 10(f) under certain conditions, including that the investment company does not purchase the securities being offered directly from its affiliated persons, and that as to municipal securities, purchases from a syndicate manager are not designated as group sales or otherwise allocated to the account of an affiliated person.

3. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any securities or other property to such registered investment company. Section 17(b) provides that, notwithstanding section 17(a), any person may file an application for an order exempting a proposed transaction from the prohibitions of section 17(a). The SEC will grant exemptive relief under section 17(b) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of each registered investment company concerned and the general policies and purposes of the Act.

4. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the order will benefit the shareholders of the Portfolio by providing the Portfolio with access to the new issue market for Rhode Island Tax-Exempt Securities needed to insure the availability of suitable portfolio securities. Applicants believe that absent the requested relief, the Portfolio will not be able to offer its shares to the public due to the limited availability of suitable Rhode island Tax-Exempt Securities in the secondary market and the substantial portion of new issues of Rhode Island Tax-Exempt Securities which Fleet Securities alone underwrites or with respect to which Fleet Securities participates as a member of the underwriting syndicate.

6. The procedures to be followed with respect to the proposed transactions are structured in such a way as to insure that the transactions in all instances will be reasonable and fair and will not involve overreaching on the part of any person concerned and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act

Applicant's Conditions

Applicants agree to the following as conditions to the requested order:

1. Principal transactions effected pursuant to the order will be effected in accordance with all of the provisions of rule 10f-3 (other than paragraph (f) thereof). Related Purchasers will not in the aggregate purchase more than the greater of 4% or $500,000, but in no event more than 10%, of any class of an issue of Rhode Island Tax-Exempt Securities purchased pursuant to the requested order. If the aggregate number of securities the Related Purchasers wish to acquire exceeds this limit, the securities acquired will be allocated to each Related Purchaser in the proportion that the number of securities that such Related Purchaser wishes to acquire bears to the total number of securities that all Related Purchasers wish to acquire.

2. Principal transactions may be effected only in Rhode-Island Tax-Exempt Securities which at the time of purchase have one of the following investment grade ratings from at least one nationally recognized rating agency: (a) one of the two highest investment grade ratings in the case of securities with remaining maturities of one year or less; and (b) one of the top three investment grade ratings in the case of securities with remaining maturities greater than one year.

3. Principal transactions effected pursuant to the order will be limited so that no such transaction will be effected if, as a result, the value of securities held by the Portfolio acquired pursuant to the order would exceed 50% of the total net assets of the Portfolio.

4. Principal transactions will be effected pursuant to the order only when the Rhode Island Tax-Exempt Securities acquired are otherwise unavailable for purchase. If Fleet Securities is the sole underwriter of the securities, this condition is automatically fulfilled because there is no other potential seller. When Fleet Securities is a member of an underwriting syndicate, the Adviser will observe the following procedures to determine when the securities are unavailable from other members of the syndicate. Initially, the Adviser will determine the aggregate number of securities which the Related Purchasers wish to acquire. Next, the Adviser will

attempt to purchase as much of this number as possible from members of the syndicate other than Fleet Securities. After acquiring as many securities as possible from such other members, the Adviser will attempt to purchase from Fleet Securities the number of securities which the Related Purchasers wish to acquire and have been unable to obtain from such other members. The securities acquired from such other members will be allocated first to the Portfolio to the extent of the number of securities it wishes to acquire, or the number of securities it is entitled to acquire based upon the relative needs of the Related Purchasers and the total number of securities purchased from such other members and from Fleet Securities, whichever is less.

5. When the Portfolio purchases Rhode Island Tax-Exempt Securities from a syndicate manager of an underwriting syndicate of which Fleet Securities is a member, the Portfolio will not (a) submit designated orders to a syndicate manager which are allocated to Fleet Securities, (b) submit group orders to a syndicate manager which designate Fleet Securities to receive any portion of the commission, or (c) otherwise allocate orders to Fleet Securities.

6. The personnel of Fleet Financial will not have any involvement with respect to proposed transactions between the Portfolio and Fleet Securities and will not attempt to influence or control in any way the Adviser's placement of orders with Fleet Securities.

7. The exemption will be valid only so long as the Adviser and Fleet Securities operate as separate entities within the holding company framework of Fleet Financial with their own separate officers and employees, separate capitalizations and separate books and records.

8. The legal departments of Fleet Securities and the Adviser will prepare guidelines for personnel of Fleet Securities and the Adviser to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the application and that the parties generally maintain arm's length relationships. The legal departments will periodically monitor the activities of Fleet Securities and the Adviser to make certain that such guidelines and the conditions set forth in the application are adhered to.

9. The trustees, including a majority of the independent trustees of the Trust who are not "interested persons" of the Trust and have no direct or indirect financial interest in the transaction, will review no less frequently than quarterly each transaction conducted pursuant to the order since the last review and will determine that the terms of such transaction were reasonable and fair to the shareholders of the Portfolio and did not involve overreaching of the Portfolio of its shareholders on the part of any person concerned. In considering whether the price paid for the security was reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time.

By the Commission

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27041 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Hartford District Advisory Council; Public Meeting

The U.S. Small Business Administration Hartford District Advisory Council will hold a public meeting on Monday, November 14, 1994 at 8:30 a.m. at 2 Science Park, New Haven, Connecticut 06511, to discuss such matter as may be presented by members, staff of the U.S. Administration, or others present.

For further information, write or call Ms. Jo-Ann Van Vechten, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, (203) 240–4670.

Dated: October 26, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–26984 Filed 10–31–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/72–0556]

DFW Capital Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On August 12, 1994, a notice was published in the Federal Register (59 FR 41548) stating that an application had been filed by DFW Capital Partners, L.P. of New York, New York, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business on August 27, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Administration Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0556 on September 19, 1994, to DFW Capital Partners, L.P. to operate as a small business investment company.

The Licensee will be owned by DeMuth, Folger and Wetherill II, L.P. (99.0%), and by Capital Partners—GP, L.P. (1.0%) and will have $10.1 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 26, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–26953 Filed 10–31–94; 8:45 am]

BILLING CODE 8025–01

[License No. 02/72–0557]

Mercury Capital, L.P.; Notice of Issuance of a Small Business Investment Company License

On August 26, 1994, a notice was published in the Federal Register (59 FR 44221) stating that an application had been filed by Mercury Capital, L.P. of New York, New York, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business on September 16, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0557 on September 26, 1994, to Mercury Capital, L.P. to operate as a small business investment company.

The Licensee will be owned by Rosenkranz & Company and Subsidiaries, L.P. (96.8%), David Elenowitz (3.0%) and Mercury Management Company, Inc. (0.2%).

The Licensee will begin operations with $15.5 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 26, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–26952 Filed 10–31–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2109]

Delegation of Authority No. 145–11

Pursuant to the Iran-Iraq Arms Non-Proliferation Act of 1992 (Public Law 102–484), and the President's Memorandum Delegation of Authority dated September 27, 1994, Section 1(a) of the State Department Delegation of Authority No. 145 of February 4, 1980, 45 FR 11655, as amended, is hereby further amended by adding the following new subsection:

(11) The functions specified in the Iran-Iraq Arms Non-Proliferation Act of 1992 (Public Law 102–484), to the extent that such functions were delegated to the Secretary of State pursuant to the Presidential Memorandum Delegation of Authority dated September 27, 1994.

Dated: October 24, 1994.

Warren Christopher,

Secretary of State.

[FR Doc. 94–27009 Filed 10–31–94; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Study on Interstate Commerce Commission Functions

AGENCY: Department of Transportation.

ACTION: Notice.

SUMMARY: Section 210(b) of the "Trucking Industry Regulatory Reform Act of 1994," (Act) requires the Secretary of Transportation to study organizational changes to the Interstate Commerce Commission (ICC), including some specified in the Act, that lead to government, transportation, or public interest efficiencies. The Department is presently seeking public comment on the ICC's report entitled, "Study of Interstate Commerce Commission Regulatory Responsibilities" dated October 25, 1994, and on options for the future locus of ICC functions.

DATES: Comments are due by November 21, 1994.

ADDRESSES: Comments may be mailed to Docket 49848, Office of Documentary Services (C–55), U.S. Department of Transportation, room 4107, 400 Seventh Street, SW., Washington, DC 20590–0001. The ICC Report referenced in this notice may be ordered from Dynamic Concepts, room 229, Washington, DC 20423; phone orders 202–289–4357 (cash, check or money order). The ICC report can also be accessed electronically from the FedWorld Information Network via the internet or with a computer and modem. Modem users can dial 703–321–8020, no parity, eight databits and one stop bit. After signing on, the report can be accessed from the FedWorld MISC Library of Files under the file name iccstudy.wp5. Internet users can use the File Transfer Protocol to connect to ftp.fedworld.gov (192.239.92.205)/misc/iccstudy.wp5, or ftp://fwux.fedworld.gov/pub/misc/iccstudy.wp5.

FOR FURTHER INFORMATION CONTACT: Edward Rastatter, 202–366–4420; Robert Stein, 202–366–4846; or Paul Smith, 202–366–9285.

SUPPLEMENTARY INFORMATION: The "Trucking Industry Regulatory Reform Act of 1994" significantly reduced entry requirements into the trucking industry and eliminated filing of independently set motor carrier tariffs. It also requires the ICC to submit a report to the Congress and to the Secretary of Transportation within 60 days of enactment, identifying and analyzing all regulatory responsibilities of the agency and recommending specific statutory or regulatory functions that could be eliminated or restructured.

Section 210(b) of the Act requires DOT to study the feasibility and efficiency of merging the ICC into the DOT as an independent agency, combining it with other Federal agencies, retaining the ICC in its present form, eliminating the agency and transferring all or some of its functions to DOT or other Federal agencies, and other organizational changes that lead to government, transportation, or public interest efficiencies. This study by DOT shall consider the cost savings that might be achieved, the efficient allocation of resources, the elimination of unnecessary functions, and responsibility for regulatory functions. DOT must solicit comments from the public with respect to both the Department's and the Commission's findings. DOT must submit the results of its study, together with any recommendations to the Congress, within four months after the date of submission of the Commission's report required in Section 210(a). Consequently, the Department is presently seeking public comment on the Commission's report, dated October 25, 1994, as well as options, including those listed below, for the future locus of ICC functions and responsibilities:

- Retaining ICC in its present form.
- Merging ICC into DOT, but keeping it as an independent agency, e.g., like the Federal Energy Regulatory Commission is part of the Department of Energy.
- Merging ICC into DOT but *not* as an independent agency, e.g., either with a separate Administrator or into an existing modal administration, such as the Federal Railroad Administration.
- Transferring all or some ICC functions to DOT and/or other Federal agencies.
- Combining ICC with other Federal agencies, e.g., Federal Maritime Commission.

At a later date, about mid-January, 1995, the Department will seek comment in a **Federal Register** notice on its preliminary findings.

Dated: October 26, 1994.

Frank E. Kruesi,

Assistant Secretary for Transportation Policy.

[FR Doc. 94–26947 Filed 10–31–94; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 94–092]

Chemical Transportation Advisory Committee (CTAC); Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee.

DATES: Completed applications and résumés should be submitted to the Coast Guard before February 3, 1995.

ADDRESSES: Persons interested in applying for membership on CTAC may obtain an application form by writing to Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or by calling the points of contact in the following paragraph.

FOR FURTHER INFORMATION CONTACT: CDR Kevin J. Eldridge, Executive Director, or LT Rick Raksnis, Assistant to the Executive Director; telephone (202) 267–1217, fax (202) 267–4816.

SUPPLEMENTARY INFORMATION: The Chemical Transportation Advisory Committee provides advice and consultation to the Chief, Office of Marine Safety, Security and Environmental Protection on matters relating to the safe transportation and

handling of hazardous materials in bulk on U.S. flag vessels and barges in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating U.S. positions at meetings of the International Maritime Organization.

The Committee meets at least once a year at U.S. Coast Guard Headquarters, Washington, DC. Special meetings may also be called. Subcommittee meetings are held to consider specific problems as required.

Applications will be considered for eight positions that expire or become vacant in July, 1995. To be eligible, applicants should have experience in chemical manufacturing, marine transportation of chemicals, occupational safety and health, or environmental protection issues associated with chemical transportation. Each member serves for a term of three years. Members of the Committee serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the U.S. Department of Transportation's policy on ethnic and gender diversity, the Coast Guard is especially seeking applications from qualified women and minority group members.

Dated: October 21, 1994.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 94–27045 Filed 10–31–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Memorandum of Understanding Between the United States and Canada Relating to the Recognition of Motor Carrier Safety and Compliance Reviews by the United States and Facility Audits by Canada

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation for the United States and the Minister of Transport for Canada signed an agreement at the North American Free Trade Agreement (NAFTA) Transportation Summit on April 29, 1994, which allows for the reciprocal recognition of safety ratings resulting from motor carrier compliance reviews conducted by the United States and facility audits conducted by Canadian Provinces. As each Province enters into this agreement, notification will be published in the **Federal Register**. The terms of the Memorandum of Understanding (MOU) will not restrict U.S. or Canadian officials from performing investigations, facility audits, or safety and compliance reviews of a motor carrier in the other country when such investigation or review is deemed necessary.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald G. Ashby, Office of Motor Carrier Field Operations, (202) 366–1795, or Mrs. Allison Smith, Office of Chief Counsel, (202) 366–1353, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Pursuant to the **Federal Register** Act (44 U.S.C. Chapter 15), the Administrative Procedure Act (5 U.S. C. 551 et seq.), and the Freedom of Information Act (5 U.S.C. 552) notice is hereby given that an agreement was signed by the governments of the United States and Canada as set forth below.

(23 U.S.C. 315; 49 CFR 1.48).

Issued on: October 24, 1994.

Rodney E. Slater,

Federal Highway Administrator.

An Understanding Between the Government of the United States of America and the Government of Canada Relating to the Recognition of Motor Carrier Safety and Compliance Reviews by the United States and Facility Audits By Canada

The Government of the United States of America and the Government of Canada (hereinafter referred to as the "Parties");

Desiring to improve the productivity and foster the economic vitality of the transborder motor carrier industry;

Seeking to promote adoption and application of compatible international safety standards for motor carriers;

Recognizing that the Parties will benefit from the elimination of the duplication of effort in the monitoring of motor carrier compliance performance;

Noting that the Parties intend that their systems for rating a motor carrier's safety fitness be compatible; and

Desiring that transborder motor carrier's safety fitness be rated in the most efficient and accurate manner possible;

Have established the following working arrangements:

Article 1—Definitions

For the purpose of this Understanding:

(A) "Central Authorities" for the United States means the Department of Transportation and for Canada means Transport Canada;

(B) "Compliance Review" for the United States means an on-site investigation by the Federal Highway Administration of a motor carrier's safety operations to determine whether a motor carrier meets safety fitness standards. The compliance review may result in the initiation of enforcement activity;

(C) "Facility Audit" for Canada means an on-site assessment by the responsible authority of a Province or Territory of a motor carrier's compliance with all applicable highway safety regulations covered by the National Safety Code for motor carriers. The facility audit may result in the initiation of enforcement activity;

(D) "Home Jurisdiction" means the State, Province or Territory of a Party which a motor carrier maintains or designates as its principal place of business;

(E) "Implementing Agency" for the United States means the Federal Highway Administration and for Canada means the Provincial or Territorial authority that has responsibility over safety regulations for transborder motor carrier operations and where a transborder motor carrier operates motor vehicles;

(F) "Motor Carrier" means a person, or legal entity, who is responsible for the vehicle, goods or passengers, and the behavior of the driver;

(G) "Motor Carrier Safety Rating" means a measure of a motor carrier's safety management controls in effect and an evaluation of motor carrier's performance with respect to safety standards by an Implementing Agency as determined by:

(1) The results of a facility audit or motor carrier safety or compliance review conducted at the motor carrier's place of business covering the safety standards of Central Authority and an Implementing Agency; and

(2) The motor carrier's performance as evidenced by a driver and vehicle roadside inspection or examination or other pertinent safety data;

(H) "Safety Review" for the United States means an on-site assessment by the Federal Highway Administration to determine if a motor carrier has adequate safety management controls in place and functioning to meet safety standards. It includes a review of the records and operations of selected motor carriers, and is used to assign motor carrier safety ratings to unrated carriers or to change an existing rating of a motor carrier; and

(I) "Safety Standards" means the motor carrier safety standards and

regulations in effect of each Central Authority and Implementing Agency that apply to drivers, vehicles, motor carriers and the carriers of hazardous materials and/or dangerous goods. Safety standards include the management controls necessary to ensure compliance and performance with all applicable safety standards.

Article 2—Facilitation and Implementation

The Central Authorities responsible for the facilitation of this Understanding will be the Department of Transportation for the United States and Transport Canada for Canada. The Implementing Agencies responsible for the implementation of this Understanding will be the Federal Highway Administration for the United States and the relevant Canadian Provincial or Territorial authorities.

Article 3—Obligations of Each Party

Each Implementing Agency is responsible for monitoring a motor carrier's compliance and performance in the motor carrier's home jurisdiction. Each Implementing Agency is responsible for enforcing its motor carrier safety standards applicable to transborder motor carriers.

Article 4—Mutual Recognition

(A) Each Implementing Agency will endeavor to establish a mutually compatible motor carrier facility audit or safety and compliance review program;

(B) When an Implementing Agency of one Party, after consultation and review with the Implementing Agency of the other Party, determines that the motor carrier facility audit or safety and compliance review program of the Implementing Agency of the other Party is compatible, it will notify the relevant Implementing Agency;

(C) Where the Implementing Agency of one Party has established a mutually compatible motor carrier facility audit or safety and compliance review program, the Implementing Agency of the other Party will recognize and accept its motor carrier safety rating;

(D) In the event that a mutually compatible motor carrier facility audit or safety and compliance review program has not been established, an Implementing Agency of one Party is not required to recognize or accept the motor carrier safety rating of the Implementing Agency of the other Party;

(E) Nothing in this Understanding will restrict or preclude representatives of the Central Authorities or Implementing Agencies of either Party from performing investigations, facility audits, or safety and compliance reviews of a motor carrier in the territory of the other Party when deemed necessary; and

(F) This Understanding is intended to establish working arrangements among the Central Authorities and Implementing Agencies of both Parties and is not intended to create new international legal obligations between the Parties.

Article 5—Exchange of Information

The Implementing Agency or Agencies of each Party will provide for the cost free exchange of motor carrier enforcement and safety rating data to the other Implementing Agency or Agencies of the other Party.

Article 6—Application of Laws

A motor carrier of one Party must comply with all applicable laws and regulations while entering, within or leaving the territory of the other Party.

Article 7—Consultations

The Parties may consult at any time on issues relating to the implementation of the Understanding. Such consultations will take place at the earliest possible date, but no later than thirty (30) days after a Party makes a written request, unless otherwise agreed.

Article 8—Termination

Either Party may, at any time, give notice in writing to the other Party of its decision to suspend or terminate this Understanding. Such suspension or termination will take effect ninety (90) days after such notice.

Article 9—Amendments

This Understanding may be amended at any time by agreement of the Parties. Any amendment will be effected by an exchange of diplomatic notes.

In witness whereof, the undersigned, being duly authorized by their respective Parties, have signed this Understanding.

Done at Washington this twenty-ninth day of April, 1994, in two originals, each in the English and French languages, the texts in each of the languages being equally authentic.

Federico Peña,

Secretary of Transportation.

For the Government of the United States of America

Douglas Young,

Minister of Transport.

For the Government of Canada

[FR Doc. 94-27001 Filed 10-31-94; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 25, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545-0393.

Form Number: IRS Letters 109C and 109(SC).

Type of Review: Extension.

Title: Return Requesting Refund Unlocatable or Not Filed; Send Copy (Letter 109C); Statement of Nonreceipt of Refund Shown on Tax Return (Letter 109(SC)).

Description: The code requires tax returns to be filed. It also authorizes IRS to refund any overpayment of tax. If a taxpayer inquires about their non-receipt of refund and no return is found, this letter is sent requesting the taxpayer to file another return.

Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 18,223.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,513 hours.

OMB Number: 1545-1093.

Regulation ID Number: IA-56-87 and IA-53-87 Final.

Type of Review: Extension.

Title: Minimum Tax-Tax Benefit Rule.

Description: Section 58(h) of the 1954 Internal Revenue Code provides that the Secretary shall provide for adjusting tax preference items where such items provide no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items provided no tax benefit because of available credits and describes how to claim a credit or refund of minimum tax paid on such preferences.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: Other (One-time claim for credit or refund).

Estimated Total Reporting Burden: 40 hours.

OMB Number: 1545–1098.

Regulation ID Number: TD 8418 (FI–91–86 NPRM, FI–90–86 TEMP, FI–90–91 NPRM, and FI–1–90 NPRM).

Type of Review: Extension.

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

Description: This regulation requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections, all of which must be in writing.

Respondents: State or local governments, Non-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 3,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Respondents—1 hour, 30 minutes
Recordkeepers—2 hours, 48 minutes

Frequency of Response: On occasion, Other (at most, every 5 years).

Estimated Total Reporting/ Recordkeeping Burden: 8,550 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–27013 Filed 10–31–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

October 21, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0019.

Form Number: FMS–1133.

Type of Review: Extension.

Title: Claim Against the United States for the Proceeds of a Government Check.

Description: If a payee claims non-receipt of a Treasury check, the FMS–1133 Claim Form and a copy of the negotiated check are sent to the payee. If the payee wishes to claim forgery, he or she answers questions on the form, and signs and returns it to the Financial Processing Division. Claims Analysts review the claim to determine final action on the case.

Respondents: Individuals or households.

Estimated Number of Respondents: 120,192.

Estimated Burden Hours Per Response: 10 minutes.

Frequency of Response: Other (as needed).

Estimated Total Reporting Burden: 20,072 hours.

Clearance Officer: Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–27014 Filed 10–31–94; 8:45 am]

BILLING CODE 4810–35–P

Public Information Collection Requirements Submitted to OMB for Review

October 21, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Office of Thrift Supervision (OTS)

OMB Number: 1550–0035.

Form Number: None.

Type of Review: Extension.

Title: Securities Offering Disclosure.

Description: Provides necessary information, including financial disclosure, to persons to make an informed investment decision regarding possible purchase or sale of securities of savings associations. Sets standards for disclosure to reduce the risk of fraudulent securities offerings, which could adversely affect the public and the safety and soundness of savings associations.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 139.

Estimated Burden Hours Per Respondent: 432 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 60,054 hours.

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G Street NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–27015 Filed 10–31–94; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

October 25, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

SPECIAL REQUEST: In order to conduct the survey described below in a timely manner, the Department of the Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by November 14, 1994. All public comments must be received by close of business November 8, 1994.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Survey Project Number: IRS PC:V 94–011–G.

Type of Review: Revision.

Title: Laguna Niguel District Director's Newsletter Reader Survey.

Description: The Director's Newsletter is sent to tax practitioners in the Laguna Niguel District on a bi-monthly basis. This newsletter has been published by the Public Affairs Office for over twenty years. In that twenty year time span, there has never been a formal mechanism to ascertain if this newsletter is meeting the needs of the practitioners. Also, there has never been any formal feedback on the quality of the contents of the newsletter.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 14,000.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 700 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–27016 Filed 10–31–94; 8:45 am]

BILLING CODE 4830–01–P

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to Section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) also prescribed use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 3 percent for calendar year 1995.

DATES: The rate will be in effect for the period beginning on January 1, 1995 and ending on December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Program Compliance & Evaluation Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (Telephone: (202) 874–6630).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Public Law 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 1995 reflects the average investment rates for the 12-month period ended September 30, 1994.

Dated: October 21, 1994.

Larry D. Stout,

Assistant Commissioner, Federal Finance.

[FR Doc. 94–27030 Filed 10–31–94; 8:45 am]

BILLING CODE 4810–35–M

Surety Companies Acceptable on Federal Bonds; Liquidation; Pacific States Casualty Company

Pacific States Casualty Company, a California corporation formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 57 FR 29386, July 1, 1992. The Company's authority was terminated by the Department of the Treasury effective March 10, 1993. Notice of the termination was published in the **Federal Register** of April 26, 1993, on page 22018.

On June 16, 1993, upon a petition by the Insurance Commissioner of the State of California, the Superior Court of the State of California for the County of Los Angeles issued an Order of Liquidation with respect to Pacific States Casualty Company. Mr. John Garamendi, the Issuance Commissioner of the State of California, was appointed as the Liquidator of the Company. All persons having claims against Pacific States Casualty Company should file their claims immediately, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal Agencies should assert claim priority status under 31 USC 3713, and send a copy of their claim, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, D.C. 20044–0875. Attn: Ms. Sandra P. Spooner, Deputy Director.

The above office will consolidate and file any and all claims against Pacific States Casualty Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202/FTS) 514–7194.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, Telephone (202/FTS) 874–6507.

Dated: October 21, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–27034 Filed 10–31–94; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

O.G.C. Precedent 10–94

Question Presented

Does 38 U.S.C. 5110(g), which governs effective dates of awards of compensation and pension benefits based on liberalizing laws or administrative issues, apply to awards based upon judicial precedents?

Held

The effective dates of awards of compensation or pension based upon judicial precedents alone are governed by 38 U.S.C. § 5110(a) and not 38 U.S.C. 5110(g), i.e., the effective dates may generally be no earlier than dates of receipt of claims. However, if an award may be predicated upon an administrative issue, such as an amendment to a regulation, prompted by a judicial precedent, 38 U.S.C. 5110(g) should be applied in assigning the effective date if to do so would be to the claimant's benefit.

Effective date: April 25, 1994.

O.G.C. Precedent 11–94

Question Presented

Are Veterans Benefits Administration officials authorized to deny a claimant's request for equitable relief under 38 U.S.C. 503, or must such a request be forwarded to the Secretary of Veterans Affairs for determination?

Held

The Secretary of Veterans Affairs has the authority pursuant to 38 U.S.C. 501(a), 503, and 512(a) to delegate the authority to determine that equitable relief is not warranted in a particular case and has impliedly delegated that authority by regulation to VA department heads, including the Under Secretary for Benefits. In addition, we believe the Secretary may authorize the Under Secretary for Benefits to subdelegate the authority to deny requests for equitable relief to subordinate officials within the Veterans Benefits Administration. However, there is no indication that such subdelegation has been attempted.

Effective date: May 2, 1994.

O.G.C. Precedent 12–94

(a) For purposes of determining entitlement to accrued pension benefits under 38 U.S.C. 5121(a), where evidence submitted prior to a beneficiary's death provides sufficient basis for prospective estimation of unreimbursed medical expenses, may such evidence form the basis for an award of accrued benefits only in cases where unreimbursed medical expenses were actually deducted prospectively from the deceased beneficiary's income for purposes of determining pension entitlement during the beneficiary's lifetime?

(b) What criteria must be met in order to provide a sufficient basis for prospective estimation of medical expenses?

Held

(a) Accrued pension benefits may be allowed under 38 U.S.C. 5121(a) on the basis that evidence in the file at the date of a veteran's death permitted prospective estimation of unreimbursed medical expenses, regardless of whether unreimbursed medical expenses were actually deducted prospectively from the veteran's income for purposes of determining pension entitlement prior to the veteran's death.

(b) Where a veteran had in the past supplied evidence of unreimbursed medical expenses which, due to the static or ongoing nature of the veteran's medical condition, could be expected to be incurred in like manner in succeeding years in amounts which, based on past experience, were capable of estimation with a reasonable degree of accuracy, such evidence may form the basis for a determination that evidence in the file at the date of the veteran's death permitted prospective estimation of medical expenses. There may be situations in which medical expenses may be predicted with a reasonable degree of accuracy from evidence in the file at the date of the veteran's death on a basis other than the recurring nature of the expenses.

Effective date: May 2, 1994.

O.G.C. Precedent 13–94

Whether service connection may be established for a disability incurred following the date on which a veteran was, in fact, discharged from active military duty, where the discharge was subsequently voided and full active-duty credit granted by a Board for Correction of Military Records to a date subsequent to the date on which the disability was incurred.

Held

Service connection may not be established for a disability incurred following the date on which a veteran was discharged from active military duty, although the discharge was subsequently voided and full active-duty credit granted by a Board for Correction of Military Records to a date after the date on which injury occurred, because the veteran was not engaged in active service at that time.

Effective date: May 9, 1994

O.G.C. Precedent 14–94

Question Presented

Where a veteran of service in the Regular Philippine Scouts or the Philippine Commonwealth Army reports having detained or interned by the enemy on a date following the date of termination of the veteran's period of active duty as certified by the service department, may VA recognize the veteran as having been in a prisoner-of-war (POW) status during the period of detention of internment and recognize that period as a period of active service under 38 CFR 3.9?

Held

In determining for veterans' benefit purposes under 38 CFR 3.9 the period of active service of a Regular Philippine Scout or a member of the Philippine Commonwealth Army while serving with the United States Armed Forces, the Department of Veterans Affairs is not bound by a service-department certification as to the ending date of the veteran's period of active duty. The Department may include a period spent in a prisoner-or-war status in determination of the veteran's period of active service, if the veteran was detained or interned by the enemy "immediately following a period of active duty." The phrase "immediately following a period of active duty," as used in section 3.9(b), may be construed as referring to an event following closely after a period of active duty, directly related to that duty, and occurring before the veteran performed activities not related to active military duty. The Department is not bound in determining a period of active service by a service-department finding of pay entitlement under the Missing Persons Act, as amended.

Effective date: June 8, 1994

O.G.C. Precedent 15–94

Question Presented

May the Secretary enforce a right to subrogation with respect to a guaranteed housing loan on which VA paid a claim

if VA failed to provide the veteran with notice of a transferee's default?

Held

Veterans who obtain a VA guaranteed loan have a constitutionally protected right to receive notice of a foreclosure proceeding that will affect their rights and liabilities. When a third party assumer defaults on the loan, VA must notify the original veteran obligor of the impending foreclosure, provided VA knows or can reasonably ascertain the veteran's address. If VA fails to provide the required notice, VA may not collect a debt from the veteran under subrogation, unless the private loan holder obtained a personal judgment against the veteran prior to VA paying the guaranty claim, or the holder provided the veteran with reasonably sufficient notice. The judgment may be subject to collateral attack in the VA appeals process if the court lacked jurisdiction to render that judgment. VA Form letter 26–251 is deemed to satisfy the notice requirement.

Effective date: June 23, 1994

O.G.C. Precedent 16–94

Questions Presented

(a) Under CFR 3.458(d), may only certain compensation benefits be apportioned to a child of a veteran adopted out of the veteran's family, or should this regulation be read to permit apportionment of the portion of improved-pension benefits payable to a veteran on the basis of the existence of the child?

(b) Does adoption outside the family divest a veteran of legal custody of a child for improved-pension purposes?

(c) If adoption outside the family does not divest the veteran of legal custody of a child, would the child be considered in the custody of the veteran for purposes of determining the rate of improved-pension payable to the veteran?

Held

(a) Under 38 CFR 3.458(d), improved-pension benefits generally may not be apportioned to a child of the veteran who has been adopted out of the veteran's family.

(b) Under Utah law, adoption of a veteran's child outside the veteran's family divests the veteran of legal custody of the child for improved-pension purposes.

(c) In light of the holding in paragraph (b) above, the third question presented is moot.

Effective date: July 1, 1994

By Direction of the Secretary.

Mary Lou Keener,

General Counsel.

[FR Doc. 94–27032 Filed 10–31–94; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on November 14, 1994, from 1:00 p.m. to 4:00 p.m. and on November 15, 1994, from 8:30 a.m. to 4:00 p.m. The meeting will take place at One Dupont Circle, NW., Washington, DC, in the Kellogg Room. The purpose of the meeting will be to discuss Veterans Affairs education issues.

The meeting will be open to the public up to the seating capacity of the conference room. Due to the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Celia P. Dollarhide, Director, Education Service (phone 202–273–7132), prior to November 10, 1994.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 2:00 p.m. on November 14, 1994.

Dated: October 24, 1994.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–27031 Filed 10–31–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 210
Tuesday, November 1, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 7, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27209 Filed 10–28–94; 3:45 pm]

BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–36]

TIME AND DATE: November 4, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, D.C. 20436.

STATUS:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–663 (Final) (Certain Paper Clips from China)—briefing and vote.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 27, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27119 Filed 10–28–94; 10:23 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, November 8, 1994.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 21215, *Seaboard Air Line Railroad Company—Merger Atlantic Coast Line Railroad Company*

Docket No. 40853, *Yellow Freight System, Inc. Of Indiana—Petition for Declaratory Order—Weighing Shipments*

Docket No. 41017, *Household Goods Carriers' Bureau—Petition for Declaratory Order—Broker Practices*

MC–247354 (C) and (P),[1] *Allen Freight Trailer Bridge, Inc., Common and Contract Carrier Applicaton*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27131 Filed 10–28–94; 10:53 am]

BILLING CODE 7035–01–P

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Wednesday, November 16, 1994 from 9:00 a.m. to 9:45 a.m. The public sessions of the Commission and the Committee meeting will be held on Wednesday, November 16, from 10:00 a.m. to 6:00 p.m., on Thursday, November 17, from 9:00 a.m. to 6:15 p.m., and on Friday, November 18, from 8:30 a.m. to 12:20 p.m.

PLACE: The Coonamessett Inn, Jones Road and Gifford Street, Falmouth, Massachusetts 02541.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. Among the major issues the Commission plans to consider at the meeting include: Implementation of the 1994 amendments to the Marine Mammal Protection Act; the status and incidental take of harbor porpoise; right and humpback whales in the North Atlantic; reintroduction of captive marine mammals to the wild; the status of marine mammals in Alaska; the proposed Acoustic Thermography of Ocean Climate (ATOC) experiment; and the gray whale, Hawaiian monk seal, and West Indian manatee.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, N.W., Room 512, Washington, D.C. 20009, 202/602–5504.

SUPPLEMENTARY INFORMATION: This is a second notice of the Commission's 1994 meeting and does not constitute any significant change in the scheduling, location, or agenda of the meeting as originally published in the September 12, 1994 (59 FR 46886) notice.

Dated: October 28, 1994.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 94–27159 Filed 10–28–94; 2:01 pm]

BILLING CODE 6820–31–M

[1] Embraces No. 40783, *Marine Transportation Services Sea Barge Group Inc. v. Allen Freight Trailer Bridge, Inc.*

federal register

Tuesday
November 1, 1994

Part II

Environmental Protection Agency

40 CFR Part 80

Fuels and Fuel Additives: Deposit Control Gasoline Additives; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–5094–3]

RIN 2060–AD71

Regulation of Fuels and Fuel Additives: Interim Requirements for Deposit Control Gasoline Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 6, 1993, EPA published a notice of proposed rulemaking to govern the use of deposit control (detergent) additives in all gasoline used in the United States beginning January 1, 1995. The proposal included a detergent additive certification program based on deposit control performance testing and standards. To provide adequate lead time to the regulated industry, however, simpler interim requirements were proposed to be in effect during the first year of the program. This final rule establishes an interim detergent additive program consistent with the proposed start-up provisions. In a subsequent action, EPA will take final action on the proposed more rigorous detergent additive testing and certification program.

EFFECTIVE DATE: This rule is effective January 1, 1995. 40 CFR 80.141(c)–(f), 80.157, 80.158, and 80.160 which contain information collection requirements (ICR) are not effective until the Office of Management and Budget (OMB) has approved them. EPA will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket No. A–91–77 at the following address: Air Docket Section (LE–131), room M–1500, 401 M Street SW., Washington, DC 20460; phone (202) 260–7548; fax (202) 260–4000. The docket is open for public inspection from 8 a.m. until 4 p.m., except on government holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket materials. Electronic copies of major documents associated with this rulemaking are available through the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). Details on how to access this bulletin board are included in Section VI of this preamble.

FOR FURTHER INFORMATION CONTACT: For information related to qualification of detergent additives for use in complying with gasoline detergency requirements contact: Jeffrey A. Herzog, US EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105; Telephone: (313) 668–4227, Fax: (313) 741–7816. For information related to the registration of fuels and fuel additives under 40 CFR part 79 contact: James W. Caldwell, US EPA (6406J), Field Operations and Support Division, 401 M Street SW., Washington DC 20460; Telephone: (202) 233–9303, Fax: (202) 233–9556. For information related to enforcement contact: Judith Lubow, US EPA, Office of Enforcement and Compliance Assurance, Western Field Office, 12345 West Alameda Parkway suite 300, Lakewood, CO 80228; Telephone: (303) 969–6483, FAX: (303) 969–6490.

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I. Background

A. Legal Authority and Rulemaking History

1. Statutory Provisions and Legal Authority

The accumulation of fuel deposits in motor vehicle engines and fuel supply systems and the impacts of these deposits on vehicle performance have been studied by industry for many years. Fuel injector and intake valve deposits have been shown to have significant adverse effects on driveability, exhaust emissions and, in some cases, on fuel economy as well. The adverse effects of these deposits have been widely accepted, and industry has or will soon have in place

standard test procedures to evaluate the deposit control effectiveness of gasoline detergent additives.[1]

Since detergent additives can help to prevent engine and fuel supply deposits,[2] Congress specified in section 211(l) of the Clean Air Act that:

> Effective beginning January 1, 1995, no person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons who sell or dispense to ultimate consumers in the United States, any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems. * * *

Section 211(l) further provides that "the Administrator shall promulgate a rule establishing specifications for such additives." As provided in section 211(l), today's rule specifies that all parties involved in the chain of gasoline production, distribution and sale are responsible for compliance with the detergent requirements. Certain compliance responsibilities will also apply to manufacturers of detergent, even before it is blended with gasoline. The registration reporting requirements of detergent additive manufacturers (under 40 CFR part 79) have also been clarified and reinforced, and these requirements must be met before a detergent additive is eligible for use in complying with gasoline detergency requirements.

EPA is issuing today's final rule under the authority of section 211(c) as well as section 211(l) so that the preemption provisions of section 211(c)(4) will apply. This is consistent with the approach EPA has taken in its reformulated gasoline regulations (59 FR 7717, February 16, 1994). As explained there, whenever the federal government regulates in an area, the issue of preemption of state action in the same area is raised. Here, as with reformulated gasoline and the associated "anti-dumping" program, the regulations will affect virtually all of the gasoline sold in the United States. Also, in contrast to commodities produced and sold in a single area of the country, gasoline produced in one area is often distributed to other areas. The national scope of gasoline production and distribution indicates that this federal rule should preempt state action to avoid an inefficient patchwork of potentially conflicting regulations. Section 211(c), enacted in the 1977 Amendments to the Clean Air Act, provides that federal fuels regulations adopted under that authority preempt non-identical state controls except under certain specified circumstances set out in section 211(c)(4). Those exceptions apply: (1) To any state for which application of section 209(a) of the Act has at any time been waived under section 209(b); and (2) where non-identical state regulations are included in a State Implementation Plan as necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. Thus, only California may regulate gasoline detergency under the first exception. Other states may adopt non-identical regulations only upon the specified showing under the second exception.

Section 211(c) authorizes the Administrator, by regulation, to "control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle" if, under section 211(c)(1)(A), emission products of the fuel or additive cause or contribute to air pollution endangering the public health or welfare, or, under section 211(c)(1)(B), if emission products of the fuel or additive will impair to a significant degree the performance of an emission control device in general use. While EPA believes that it has clear authority to regulate gasoline detergency under section 211(c)(1)(A), the Agency also recognizes that it has such authority under section 211(c)(1)(B).

That gasoline combustion emissions cause or contribute to harmful air pollution is now undisputed, and a requirement for proper detergent additization to mitigate such emissions is appropriate under the broad authority of section 211(c). This authority also supports certain program elements that EPA is implementing in order to make the detergent program most effective. As explained further below, these include a detergent registration scheme and, as explained in the enforcement section of the preamble (Section IV), application of certain requirements to detergent manufacturers even prior to blending of detergent with gasoline. Public comment on EPA's legal authority to make such requirements of detergent manufacturers is addressed in Section IV.

EPA believes consideration of the factors under section 211(c)(2)(A) support its authority under section 211(c)(1)(A). Air pollution from gasoline vehicles is clearly harmful. Further, while vehicle technology can affect deposit formation, EPA does not believe that the formation of the deposit types that are the focus of the regulatory controls implemented today, and the associated emissions effect, can reasonably or cost effectively be addressed by requiring changes in vehicle design. Vehicle manufacturers have an incentive and continue to work to minimize susceptibility to deposit formation, which affects driveability as well as emissions. In addition, detergents are also important to control deposits in vehicles currently in use and prone to deposit formation which will continue to remain in use for some time.

2. Rulemaking History

The CAA requires that EPA promulgate a rule establishing specifications for detergent additives and requiring all gasoline to contain detergent additives by January 1, 1995. EPA encouraged full participation of the regulated industry and other interested parties in the development of the rule to implement these requirements. A public workshop was held on February 13, 1992 to initiate open discussion of the relevant issues and EPA met with numerous industry representatives separately to obtain their input.

The notice of proposed rulemaking (NPRM) was published on December 6, 1993 (58 FR 64213) and a public hearing was held in Ann Arbor, Michigan on January 11, 1994. Oral testimony was heard from 6 presenters. EPA's initial intent was to accept subsequent written public comment on the NPRM until February 11, 1994. However, in response to industry requests for additional time, comments were accepted until March 11, 1994. EPA received 31 written comments on the NPRM. These comments are summarized and responded to in later sections of this preamble.

For the reasons discussed further in Section I.C., EPA has decided to finalize the proposed detergent gasoline program in two stages. Today's final rule, establishing an interim detergent program, will be in effect until replaced by the anticipated second final rule. The latter is expected to cover the remaining issues from the NPRM as well as issues raised in a notice to reopen the comment period.

B. Proposed Regulatory Approach

EPA proposed a performance-based detergent additive certification program under which all gasoline distributed and sold in the United States would be required to contain a detergent additive which, in the context of prescribed

[1] The reader is referred to the Notice of Proposed Rulemaking (NPRM: 59 FR 64213, December 6, 1993) for an in-depth discussion of the causes of engine and fuel supply deposits, their impacts on vehicle performance, and deposit control measures.

[2] *See* Sen. Rep. No. 101–228, 101st Cong., 1st Sess. at 116 (Dec. 20, 1989) ("[F]uel additives, such as detergents, are available to maximize the performance of engines and minimize emissions.").

vehicle testing, had the demonstrated ability to meet specified standards of deposit control performance in a predetermined series of test fuels. Fuel injector deposit (PFID) and intake valve deposit (IVD) control performance tests and standards were proposed that would rely on industry-consensus test procedures. Additives meeting the detergent performance standards would qualify for certification. These detergents would then be acceptable for meeting gasoline deposit control requirements when used at the treatment rates which were needed to meet the performance standards during testing.

Due to inadequate lead time for industry to complete the vehicle testing requirements for certification, EPA proposed a simpler interim program to be in effect January 1 through December 31, 1995. During this interim period, all gasoline would be required to contain detergent additives that satisfied simplified criteria, but compliance with the certification testing program would not be required until January 1, 1996. EPA proposed that additives could qualify for the interim program based either on data collected to satisfy California's detergent additive program,[3] or on specifications on chemical composition and additive manufacturer recommendations regarding proper usage.

C. Scope of This Action

As previously mentioned, this final rule implements only the interim detergent program, beginning January 1, 1995. Full certification requirements are expected to be promulgated by June 30, 1995 and to go into effect about a year thereafter.[4] The requirements of the interim program will remain in effect until replaced by the later rulemaking.

EPA is following this two-step approach for two reasons. The first reason is to allow the industry time to complete development of a consensus test procedure to evaluate an additive's ability to control fuel injector deposits. At the time the NPRM was published, many of the basic elements of the most widely used vehicle-based PFID and IVD control test procedures were broadly accepted by industry, but standard versions of these procedures had not been published. While the American Society for Testing and Materials (ASTM) was actively developing standard versions of these procedures to enhance comparability of test results, the availability of finalized test specifications was uncertain. EPA thus proposed versions of these test procedures based on the most current ASTM drafts available at the time, which included many of the improvements under consideration by ASTM. EPA also proposed to adopt the ASTM versions of these procedures in the detergent program final rule if the final ASTM specifications became available in time and if they closely resembled the proposed procedures. Public comment on the NPRM supported EPA's intent to adopt the final ASTM procedures when available.

Since the publication of the NPRM, ASTM finalized its intake valve deposit control procedure as ASTM D–5500, and EPA anticipates adopting it for use under the detergent certification program without further notice and comment. However, ASTM has not yet finalized its PFID control test procedure, and EPA believes it is appropriate to delay finalization of the detergent certification program until this procedure is available (expected in late 1994 or early 1995). Adoption of the final ASTM PFID control test procedure will result in improved confidence in the certification test results.[5] Consistency of EPA testing requirements with an industry consensus standard test procedure will also avoid unnecessary industry burdens and confusion which would result from different regulatory and industry practices.

The second reason to delay finalization of the full certification program is to allow EPA an opportunity to assess concerns raised by some commenters related to the possible incremental accumulation of combustion chamber deposits (CCD) which may result from the use of detergent additives designed to control PFID and IVD. EPA received contradictory public comments on this issue. On one side, the petroleum and additive manufacturing industries stated that the causes and impacts of CCD are not understood well enough to warrant EPA's implementation of any measures to control CCD at this time. These commenters further stated that, even if the need for CCD control is established, regulatory action should not be taken until a suitable CCD control test procedure and standard are available.

On the other hand, automobile manufacturers claimed that the impact of CCD on driveability and emissions is sufficiently well demonstrated for EPA to take action. They strongly urged EPA to investigate the additive contribution to CCD as soon as possible, with the ultimate aim being a CCD control performance test and standard. Comments from automobile manufacturers further stated that, in the absence of a standardized CCD performance test, EPA should implement some interim measure to help limit the potential for increased CCD that could result from detergent additive over-use. To this end, the American Automobile Manufacturer's Association (AAMA) suggested a 70mg/100ml maximum limit on the unwashed gum level in additized gasoline, as determined by ASTM test procedure D381. AAMA stated that a correlation exists between the levels of unwashed gums in gasoline and the amount and type of detergent additive present, and hence the potential for such additives to have an adverse impact on CCD. However, comments from the petroleum industry stated that the unwashed gum level is an unreliable measure of detergent usage and is not well correlated with CCD formation. The relationship between detergent use, unwashed gums, and CCD will be addressed at length in the forthcoming reopening notice.

II. Applicability

A. Summary of Proposed Applicability Provisions

The NPRM noted that section 211(l) refers to "any gasoline," and does not distinguish between gasoline used for highway vehicles and engines and gasoline used in nonroad applications.[6] Therefore, EPA proposed that detergent requirements apply to all gasoline used in highway vehicles and engines (including both reformulated and conventional gasolines,[7] oxygenated gasoline, and the gasoline component of alcohol blends such as M85 and E85), as well as gasoline used in nonroad applications (including racing fuel and marine fuel). EPA also proposed that

[3] Title 13, section 2257 of the California Code of Regulations.

[4] This expectation is based on EPA's estimate of the amount of lead time which industry will require to comply with anticipated testing requirements after promulgation of the detergent certification program in the second final rule. See memo to the Docket A–91–77 from Robert Johnson, entitled, "Estimated Lead Time for Industry to Comply with Vehicle Testing Requirements," September 21, 1994.

[5] EPA will evaluate whether changes to the ASTM PFID test procedure are necessary prior to its adoption for regulatory purposes, and will provide the opportunity for additional public comment if appropriate.

[6] The reader is directed to the NPRM for a discussion of EPA's legal authority regarding the types of gasolines which were proposed to be covered by the proposed detergency requirements (58 FR 64213, December 6, 1993).

[7] Reformulated and conventional gasolines are defined in "Regulation of Fuel and Fuel Additives: Standards for Reformulated and Conventional Gasoline," Final Rule, 59 FR 7715 (February 16, 1994).

gasoline for military use be covered by this regulation.

EPA proposed that both leaded and unleaded gasoline would be required to contain detergent additives that comply with the same proposed requirements. In the NPRM it was noted that, while barred from sale for highway vehicles as of January 1, 1996, leaded gasoline will still be permitted to be sold for off-highway use, for example, in certain construction equipment and farm vehicles. EPA also stated the belief that the use of detergent additives would have a beneficial impact on the emissions performance of engines using leaded gasoline.

EPA proposed that the detergent requirements would not apply to gasoline used in internal combustion aircraft engines because they are separately regulated under Part B of Title II of the Clean Air Act. EPA also proposed that test fuels for research and developmental purposes would be exempted from the detergency requirements provided that certain requirements for exemption were satisfied (see Section IV).

B. Applicability Provisions Finalized Under the Interim Program

The detergency requirements adopted in today's rule closely follow the proposed provisions. They apply to all gasoline, highway and off-road, including both reformulated and conventional gasolines, oxygenated gasoline, and the gasoline component of alcohol blends such as M85 and E85, as well as to marine fuel and gasoline used for military purposes. Gasoline service accumulation fuel will also be required to comply with detergency requirements, as will the gasoline component of alcohol blend service accumulation fuel.[8] However, racing fuel, aviation fuel, emissions certification fuel, and gasoline used for research and developmental purposes will be exempted from compliance. Different requirements for leaded gasoline will be implemented to allow optimization of the additive used (see Section III.C.). The reader is directed to Section III.D for a summary and analysis of comments on the applicability of gasoline detergency requirements.

III. Interim Program Basic Provisions

A. Background

As noted above, to allow adequate time for industry to comply with the specific vehicle testing requirements of the detergent certification program, EPA proposed a simplified interim program as an available option during 1995. Under the proposal, compliance with the full detergent certification program would not be required until January 1, 1996. EPA estimated that the one-year duration of the interim program would be sufficient to allow industry to complete the testing requirements of the certification program.

Under the interim program, EPA proposed that all gasoline sold to the ultimate consumer (unless otherwise exempted) would be required to contain a detergent which had been registered under the 40 CFR Part 79 Fuels and Fuel Additives (F/FA) Registration Program and which: (1) Was composed primarily of at least one, or a combination of, four chemical classes of detergent that EPA believed to be effective in controlling deposits based on current industry practices (polyalkyl amines, polyether amines, polyalkylsuccinimides, and polyalkylaminophenols); or (2) had been approved under the California Air Resources Board (CARB) detergent certification program. Detergents that met the chemistry-based criteria would be required to be used at least at the minimum concentration recommended by the manufacturer for keep-clean control of intake and fuel injector deposits, and those that met the criteria based on CARB certification would be required to be used at least at the minimum concentration approved in the CARB certification. Detergents used under the interim program would be required to be identified by an interim detergent certification number issued by EPA.

EPA proposed that an application for an interim detergent certification number would need to be submitted to EPA containing the following: the name of the detergent manufacturer and the detergent as supplied by the detergent manufacturer to satisfy the standard registration requirements of 40 CFR part 79, a complete description of the detergent additive's chemical composition including the weight percent of each of the components that compose the detergent package, the minimum concentration of each component of the detergent additive that will be used, and a suitable analytical procedure to identify the detergent additive in its pure state.

In addition to these proposed requirements, EPA asked for comment on whether some form of performance test data should also be required to be submitted for detergents used under the interim program, and the appropriate acceptance criteria for this data. EPA proposed to reserve the right to examine any substantiating data and could deny or revoke a detergent registration based on this review. The enforcement task of ensuring that the proper type and amount of additive has been added to the gasoline in the market was proposed to be accomplished primarily through paper audit "mass balance" procedures rather than actual chemical or vehicle-based testing.

The interim detergent program finalized in today's rule retains the basic structure and intent of the proposed program, but departs from the proposal in a number of implementation details. As was proposed, the interim program requires precise composition and concentration information on detergent additives which are to be used for compliance with the detergency requirements of today's rule, as well as consistency between this information and the additive treat rate reported for (and used in) detergent gasoline. However, to reduce paper flow and other administrative procedures, a detergent certification number will not be issued by EPA to acknowledge properly registered additives during the interim program. Furthermore, the final rule does not contain the proposed restriction that a detergent additive must either be CARB-certified or belong to one of four specified chemical classes. Other departures from the proposed rule have been made, as well.

The specific requirements of the interim detergent program as finalized in today's rule are described in sections B-D below. The key differences between the proposed and final requirements for the interim program are discussed in Section D, the Summary and Analysis of Comments. The enforcement provisions included in todays rule are discussed in Section IV.

B. Description of Interim Detergent Program Requirements

Since CAA section 211(l) requires that all gasoline contain detergent additive(s) prior to sale to the consumer, the direct responsibility rests on the fuel manufacturer/marketer to ensure that a suitable registered detergent has been added to gasoline at an effective concentration. However, detergent manufacturers are responsible for properly registering their detergent additives and for providing detergent products which conform to these registrations. This section describes how EPA will implement the registration aspects of the interim program, and addresses the responsibilities of both gasoline manufacturers/marketers and detergent manufacturers. This section focuses on requirements related specifically to unleaded gasoline.

[8] Service accumulation fuels are used to demonstrate compliance with durability requirements during vehicle emission certification testing.

Special provisions applicable to leaded gasoline are discussed in Section III.C.

In the NPRM, EPA proposed that any interested party (detergent manufacturer, fuel manufacturer/marketer, or other) could take responsibility for the informational requirements under the interim program. EPA recognized that, in many cases, the fuel manufacturer/marketer would likely accept most of this responsibility since it would bear the ultimate accountability for ensuring the proper use of detergent additives. EPA further proposed that the detergent additive data (e.g. composition, treatment rates) would be submitted in a separate application. However, comments indicated that much of the same information was already required under the existing F/FA registration program. Furthermore, in many cases, fuel marketers would have to be dependent on data generated by additive manufacturers to comply with the detergent information requirements.

Therefore, as described below, the requirements of this interim program are based primarily on information items already required for F/FA registration. EPA has selected this approach for three reasons: (1) It utilizes an existing reporting program rather than creating a new one; (2) it minimizes additional information submittal; and (3) it eliminates the confidential business information (CBI) concerns raised by additive manufacturers in their comments on the NPRM (see Section III.E).

1. Requirements for Detergent Additive Manufacturers

For a detergent additive to be eligible for use in complying with gasoline detergency requirements, its manufacturer must ensure that the additive registration data provided under 40 CFR part 79 meets the registration information requirements described below.[9] To the extent that existing detergent additive registrations do not comply with these specifications, they must be updated prior to the January 1, 1995 start date for the interim program.

a. *Detergent Additive Compositional Data.* Pursuant to pre-existing requirements under § 79.21(a), the registration of fuel additives requires the submittal of information on the identity and amounts of the components of the additive product. Today's rule specifies that, to be eligible for use in compliance with gasoline detergency requirements, the compositional information submitted for registration of a detergent additive must include: (1) A complete description of the chemical composition of the detergent additive package, such that the chemical structure of each of the components in the detergent package can be determined; and (2) the exact weight and/or volume percent (as applicable) of each of the components that compose the detergent package. In addition, components of the detergent additive package which have an effect on deposit control efficiency (i.e. detergent-active components) must be identified as such. Specifically, the registration must indicate which of the following chemical or other designations pertains to each detergent-active component: (1) polyalkyl amine, (2) polyether amine, (3) polyalkylsuccinimide, (4) polyalkylaminophenol, (5) detergent-active carrier oil, (6) other detergent-active component.

In the past, in registering their additives, some detergent manufacturers have reported detergent-active components as a product of the reaction of specified chemical reactants. Since yields of detergent-active components from these reactions could vary from 0 to 100 percent, chemical specifications of this type are inadequate for EPA to determine the composition of the detergent additive package. For example, the package could contain unknown amounts of unchanged primary reactants as well as chemical products of different molecular weight and different side reactants. To be eligible for use after the effective date of this rule, more precise identification of the components of the detergent additive package will now be required. In the case of polymer components, IUPAC nomenclature with a molecular weight distribution should be specified.

Within a given detergent additive registration, no variation will be allowed in the identity or concentration of any of the detergent-active components. The identity and concentration of other components of the detergent additive package may vary under a single registration provided that such variability does not change the treat rate needed for effective deposit control. Detergent additive packages which differ in identity or concentration of detergent-active components must be separately registered. Variability in other possible additive package components such as the antioxidant, corrosion inhibitor, metal deactivator, and/or handling solvent is acceptable, provided that such variability does not affect the concentration of the active ingredients in the additive package. It should be noted that EPA will continue to evaluate what is an acceptable level of variability in additive compositional data and may revise these requirements for the detergent certification program in a later rulemaking.

b. *Recommended Minimum Effective Concentration.* As specified by § 79.21(d), a fuel additive registration must include the recommended range of concentration for the additive when mixed in fuel. To qualify for use in detergent gasoline under the requirements of today's rule, the lower bound of this recommended range, in the case of a detergent additive, must equal or exceed the minimum concentration which the detergent additive manufacturer deems necessary for the control of fuel injector and intake valve deposits. While not required to be submitted on a routine basis, data which supports the claim of deposit control effectiveness at this concentration is expected to be available to EPA on request. Requirements for such supporting data are further discussed in Section B.1.c, below.

The minimum effective concentration of the detergent additive, as reported in the detergent registration,[10] must correlate with the concentrations reported to be used by the fuel manufacturer. Specifically, the lower end of the detergent additive concentration range listed in a gasoline registration must equal or exceed the minimum recommended concentration specified in the respective additive registration.[11] Thus, it is incumbent upon the detergent additive manufacturer to accurately communicate the recommended concentration to his customers, in writing, for each registered detergent package. As described below in Section III.C, different concentration recommendations may be specified for leaded and unleaded gasoline, and, in the case of carburetor detergents, restriction to leaded gasoline should be indicated. If the detergent manufacturer recommends a minimum concentration to his customers that is higher than the minimum recorded on the additive registration, this could be construed as a potentially fraudulent misrepresentation. On the other hand, if the detergent manufacturer recommends

[9] Detergents used to comply with gasoline detergency requirements must, of course, comply with other applicable registration requirements prescribed in Part 79, including those recently finalized in Subpart G (see 59 FR 33042, June 27, 1994).

[10] Detergent additive concentration must be reported in gallons of detergent additive per gallons of gasoline, to facilitate compliance with volume accounting reconciliation requirements (see section IV).

[11] Exceptions to this requirement are permitted when specifically approved by EPA, as discussed in Section III.B.2.

to his customers a minimum additive concentration that is lower than the minimum amount recorded on the additive registration, then a misadditization of the gasoline would be presumed to occur, and both the fuel and additive manufacturers might be liable for the nonconforming gasoline. These liability issues are discussed further in Section IV of this preamble.

In an analogous case, detergent additive registrants must also accurately communicate the recommended detergent concentration and any usage restrictions, in writing, to their customers who are secondary additive manufacturers. Such secondary manufacturers purchase detergent from original manufacturers with the intent to resell the detergent, with or without additional ingredients in the additive package. In many instances, the secondary additive manufacturer will not know the identity and/or concentration of the components of the purchased additive product. However, provided with the recommended concentration of the purchased additive, the secondary manufacturer can, in turn, specify the proper concentration rate for his "relabeled" or "re-registered" detergent additive package. By linking registrations, EPA will be able to ascertain whether consistent concentrations of the same detergent are recommended by the original manufacturer and used (as a minimum) by any related secondary additive manufacturers and, ultimately, by the fuel manufacturers who are customers of either the original or secondary additive manufactures.

c. *Substantiation of Deposit Control Effectiveness.* As discussed in detail in the Summary and Analysis of Comments, the weight of public comment on the NPRM supported requirements for data to substantiate claims of detergent performance, even during the interim program. Public comment further stated that reputable detergent manufacturers would already have such data. Accordingly, this final rule requires that, during the interim program, supporting data must be available to demonstrate effective deposit control, but does not adopt specific test procedures and standards. This approach should provide reasonable assurance of effective deposit control performance, without sacrificing the flexibility which manufacturers will need in order to rely on existing data during the interim period. On a case-by-case basis, therefore, EPA may require that test data be provided to support the claim of deposit control effectiveness which is implicit in the minimum recommended concentration submitted by the detergent additive manufacturer pursuant to the F/FA registration requirements in § 79.21(d). EPA may request supporting data for a variety of reasons, for example, as the result of a review of detergent additive registration information disclosing an apparent anomaly in the type or concentration of the detergent additive used.

EPA will request the supporting test data from the party who registered the detergent additive. EPA regards the supporting test data as substantiation of the "recommended range of concentration" data which the additive manufacturer is required to submit under § 79.21(d) of the F/FA registration program. As such, EPA believes that the regulatory authority to require this data from the additive manufacturer derives from CAA section 211 (a) and (b). This authority is further supported by CAA section 114, which provides that the Administrator may require the submission of any information that is necessary to implement the requirements of the Act from any party subject to the provisions of the Act.

When requested, the detergent registrant must provide the supporting data to EPA within 30 days of receipt of the request for such data. If EPA judges the supporting data to be inadequate (or if it is not received), EPA may suspend or revoke the eligibility of the subject detergent for use in compliance with the requirements of this rule and may notify all fuel manufacturers (and secondary additive manufacturers) whose registrations contain the subject detergent of this revocation. In addition, EPA may initiate the enforcement actions described in Section IV.

EPA will be guided by the following considerations during the interim program when evaluating the adequacy of data used as evidence of detergent additive performance in controlling fuel injector and intake valve deposits. First, during the interim program, EPA will accept the data required by CARB to obtain a valid California detergent certification for gasoline sold anywhere in the United States, provided that the subject detergent was not certified by CARB specifically for use in California Phase II reformulated gasoline (Title 13, Chapter 5, Article 1, Subarticle 2, California Code of Regulations, Standards for Gasoline Sold Beginning March 1, 1996). CARB detergent certification specific to California Phase II reformulated gasoline will not be considered adequate to support the effectiveness of a detergent additive in gasoline sold outside the State of California.

EPA may also accept other test data to demonstrate adequate deposit control performance, provided that good engineering practices were followed during the conduct of the test and provided that the test fuels were reasonably typical of in-use fuels. For example, data collected using industry standard BMW 318i IVD and Chrysler 2.2 liter PFID tests (including the CARB procedures) will generally be acceptable. Other vehicle or engine tests may be acceptable, provided that a reasonable correlation with the BMW and Chrysler tests and the associated industry standards can be demonstrated.[12] Bench test data may be acceptable to support performance claims for fuel injector deposits but not for IVD. Furthermore, the validity of bench-test data will likely require a high level of scrutiny by EPA due to concerns that it may not be as representative of actual in-use performance as vehicle or engine test data.

The test fuels used in obtaining the required supporting data must contain the active components of the detergent additive package at no more than the minimum concentration recorded in the subject gasoline registration. Also, these test fuels must not contain any active detergent components other than those recorded in the subject gasoline registration. Any test fuel that was taken directly from commercial refinery production stock will be acceptable for deposit control testing. Specially refined low-deposit-forming fuels such as indolene are not acceptable.

Other specially blended test fuels will be evaluated by EPA for acceptability based on the following criteria. The composition of the blended test fuel(s) used in deposit control testing should be reasonably typical of in-use gasoline in its tendency to form such deposits (or more severe than typical in-use fuels). As an example, EPA will likely consider a test fuel acceptable if the key fuel parameters identified in the NPRM as affecting a gasoline's tendency to form PFID/IVD (sulfur, olefins, aromatics, T–90, and oxygenates) are at least at

[12] The reader is directed to the NPRM for a discussion of IVD and PFID control test procedures. The historical industry standard for the BMW 318i test requires the maintenance of less than 100 mg per valve on average over the accumulation of 10,000 miles. The historical industry standard for the Chrysler 2.2 liter test requires the maintenance of less than 10 percent flow loss in any injector over the accumulation of 10,000 miles. The basic elements of these tests have been well established (driving cycle, test vehicle, etc.). However, various laboratories have conducted these tests over the years by following their own in-house procedures regarding other less vital aspects of the tests. For the purposes of the interim program, EPA will allow latitude in regard to the manner in which these tests were performed provided that a reasonable level of test quality was maintained per industry practice.

average levels.[13] To help account for the deposit forming tendency of oxygenates, the test fuel(s) used for PFID/IVD control testing should preferably contain an oxygenate (ethanol, MTBE, ETBE, TBA, etc. * * *) at greater than 7 volume percent. Seven percent total oxygenate content was chosen because it will permit the use of data collected on most of the oxygenates for which waivers have been granted under Section 211(f) of the CAA. EPA is not requiring that fuels used in testing to support additive performance claims contain an oxygenate during the interim program. However, EPA anticipates that testing of oxygenated gasoline will be required under the detergent certification program and wishes to encourage this practice under the interim program.

The test fuel evaluation criteria discussed above are significantly less stringent than the test fuel specifications proposed for the performance testing under the detergent certification program. However, EPA's intent in using test fuel evaluation criteria for the interim program is primarily to preclude the use of test data collected on fuels that have an abnormally mild tendency to form deposits. Also, EPA recognizes the need for manufacturers to use existing data to the fullest extent possible, and believes that these specifications will not disqualify most existing test data. To help ensure that this is the case, a manufacturer may petition EPA to accept test data that does not conform to the guidelines for acceptability described above. Such a petition should include information demonstrating that the test data submitted to support additive performance claims will ensure an equivalent level of deposit control as that provided by data based on test fuels conforming to the guidelines described above.

d. *Detergent Additive Identification Procedure.* EPA's enforcement responsibilities require the ability to analyze detergent additive samples to determine whether the composition of such additives is consistent with the compositional information supplied by the additive manufacturer (see Section IV). For this purpose, a suitable analytical procedure capable of identifying the detergent additive in its pure state is needed. Thus, EPA reserves the right to request such a procedure from any party who has registered a detergent additive.

In the NPRM, EPA proposed that the party "certifying" a detergent additive under the interim program would be responsible for supplying the analytic test procedure. The NPRM further assumed that the fuel manufacturer, rather than the detergent additive manufacturer, would most often be the certifier. Public comment did not dispute the need for EPA to have access to such a procedure. However, commenters did point out that detergent manufacturers consider such procedures to be confidential business information, and would be unwilling to provide these procedures to the fuel manufacturers, who are their customers. This final rule therefore specifies that, when EPA determines that an identification test procedure is needed for a detergent additive, EPA will direct its request for such a procedure to the detergent additive registrant. Similar to the argument concerning the provision of supporting test data by the detergent additive producer, EPA regards the identification test procedure as substantiation of the registration information which the additive manufacturer is required to submit under § 79.21(a). EPA thus believes that the regulatory authority to require this data from the additive manufacturer derives from CAA section 211 (a) and (b). In fact section 211(b)(2)(b) specifically calls for the fuel additive registrants "to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, * * *". EPA's authority to require the submission of this data is also supported by the provisions of section 114 of the CAA, which authorizes the Administrator to collect any information which may reasonably be required to carry out the purposes of the Act from any person subject to the provisions of the Act.

The detergent registrant will be required to comply with EPA's request for the analytical test procedure within 30 days of the request. The procedure must be acceptable to the Administrator in its ability to both qualitatively and quantitatively identify each component of the detergent additive package. EPA reserves the right to reject aspects of this procedure if the Administrator determines that they are insufficient. EPA will evaluate the adequacy of the test procedure by conducting such procedure, attempting to repeat the results submitted by the additive manufacturer. To be acceptable, the procedure must be able to provide results that conform to reasonable and customary standards of repeatability and reproducibility, and reasonable and customary limits of detection and accuracy, for the type of test in question. If the detergent manufacturer does not supply an adequate procedure within the allotted time, the detergent will no longer be eligible for use in complying with the requirements of this rule. Fuel manufacturers (and secondary additive manufacturers) whose registrations include the ineligible additive will be given 45 days to switch to another additive product.

Although not required under the interim detergent program, EPA prefers that the test procedure provided to satisfy the requirements of this rule be a fourier transform infrared spectroscopy (FTIR) test method which will yield a qualitative and quantitative infrared spectrum of the detergent additive package in its pure state. As part of such a FTIR method, an actual infrared spectrum of the detergent additive package and each component part of the detergent package obtained from this test method would be needed to make a full identification possible. EPA intends to require that such a FTIR test procedure be provided by the additive manufacturer as part of the standard requirements of the detergent certification program to be finalized in a later rulemaking.

2. Requirements for Fuel Manufacturers

The registration information provided by the fuel blender (i.e., the fuel manufacturer who adds detergent to gasoline fuel) must include the exact trade name and manufacturer of the detergent additive product (pursuant to §§ 79.11(b) and (c)). In addition, except as discussed below, the range of concentration submitted pursuant to § 79.11(c) must indicate that the gasoline contains the subject detergent additive at a concentration no less than the minimum recommended concentration specified in the detergent additive registration for control of deposits. Fuel manufacturers should be aware that their existing gasoline registrations, which list detergent additives as components, may need to be changed to conform to these requirements, reflecting potential changes in the additive registrations necessitated by this rule. Accurate identification of the detergent additive being used is critical to the validity of the fuel registration. Fuel manufacturers must provide identifying information adequate to enable EPA to determine which registered detergent additive product is being used by the fuel manufacturer.

[13] In this regard the following national 50th percentile levels were determined as part of the analysis performed for the NPRM: sulfur 0.015 weight percent, olefins 8.8 volume percent, aromatics 28.6 volume percent, and T–90 335 °F. The NPRM contains a detailed discussion of the method by which these values were calculated using American Automobile Manufacturers Association (AAMA) fuel survey data.

It is EPA's expectation that fuel marketers will ensure that a detergent is effective in controlling deposits prior to purchasing the product from the detergent manufacturer. If EPA finds that performance claims are unsubstantiated, the fuel marketer and/or detergent registrant may both potentially be liable for violations as described in Section IV. EPA is aware that, as part of current good business practice, fuel marketers generally do insist on such evidence for themselves before purchasing the additive for purposes of blending detergent gasoline. Consistent with current business practice, this regulatory approach recognizes the responsibility of both the fuel and detergent manufacturers in assuring that an effective detergent is used.

EPA recognizes that, theoretically, the requirements discussed above could put additive manufacturers in the position of being able to dictate the minimum amount of their detergent additive products which their customers (i.e., the fuel manufacturers) are required to purchase. In practice, EPA believes that competitive forces in the marketplace will generally prevent additive manufacturers from inflating the minimum recommended concentration in their detergent registrations in order to boost their sales. However, as an additional safeguard against this possibility, the final rule contains a special provision which permits fuel manufacturers to record and use a lower detergent concentration than is specified in the respective detergent registration.

Under this provision, fuel manufacturers may use a detergent additive product at a treat rate lower than the minimum specified by the additive manufacturer, provided that the fuel manufacturer informs EPA in writing of the intent to use the lower concentration, and states in this notification that data demonstrating the deposit control effectiveness of the lower treat rate is available at EPA's request. In exercising this option, the fuel manufacturer thus undertakes responsibilities normally assigned to the additive manufacturer. When requested by EPA, the fuel manufacturer must supply, within 30 days, the data necessary to support the claim of detergent effectiveness at the lower treat rate. In such an instance, EPA will also require that the additive manufacturer submit data, in support of the higher treat rate specified in the subject additive registration. EPA will then evaluate whether the lower treat rate provides adequate deposit control by comparing the quality and results of both sets of test data in relation to each other and to industry-consensus practices and standards. EPA will inform both the fuel manufacturer and the additive manufacturer of its decision within 60 days of receipt of both sets of data. Either party may appeal EPA's decision. If EPA determines that the fuel manufacturer's data does not adequately demonstrate the effectiveness of the lower detergent concentration, the fuel manufacturer may be subject to penalties (described in Section IV) for any gasoline which has been additized using the lower concentration.

C. Requirements for Leaded Gasoline

Although barred from sale for highway vehicles as of January 1, 1996 (under CAA section 211(n)), leaded gasoline will still be permitted to be sold for off-highway use. Since deposit-related emissions problems are not restricted to highway vehicles, EPA believes that it is necessary to require a proper level of deposit control in leaded gasoline. However, due to the less sophisticated nature of the emissions control equipment in leaded fuel vehicles, the prevention of deposit-related emissions does not necessitate the same level of deposit control performance in leaded gasoline as in unleaded gasoline. EPA agrees with public comment that a sufficient level of deposit control can be achieved in leaded gasoline by the use of carburetor-type detergents as well as IVD/PFID detergents, at relatively low concentrations, with a concomitant savings in additive treatment cost (see summary and analysis of comments on this subject in Section D.1.a, below). Therefore, this final rule allows the use of either carburetor-type or IVD/PFID detergents to comply with leaded gasoline detergency requirements. The responsibilities of fuel and detergent manufacturers regarding the requirements for leaded gasoline are otherwise the same as those described previously for unleaded gasoline.

Carburetor-type detergent additives intended for use in leaded gasoline, as well as IVD/PFID detergents (which are effective in both leaded and unleaded gasoline) must still be registered and leaded fuel manufacturers must use a registered detergent at a concentration that is effective in controlling deposits. To comply with gasoline detergency requirements, the leaded fuel manufacturer has the option of using a carburetor-type detergent at the minimum concentration recommended by the additive manufacturer for the control of carburetor deposits, or an IVD/PFID-type detergent. If the latter is used, it may be added at the minimum concentration recommended by the additive manufacturer for IVD/PFID control or, if available, the manufacturer's lower recommendation for carburetor deposit control. In any case, the minimum concentration used by the fuel manufacturer must correspond to the minimum effective concentration stated in the detergent manufacturer's additive registration for the control of the relevant type of deposits, unless a specific exception is allowed by EPA.

Under the same provisions described earlier in the case of unleaded gasoline, EPA may require the submission of data by the additive manufacturer to support the applicable minimum treatment rates recommended in the detergent registration. As mentioned in the previous section, if the fuel manufacturer believes a lower effective treatment rate is supported by available data, then he may submit data to EPA which substantiates the effectiveness of the detergent at the lower concentration EPA will follow the same evaluation process as described previously in relation to treat rates for unleaded gasoline.

EPA will be guided by the following considerations during the interim program when evaluating the adequacy of data used as evidence of detergent additive performance in controlling carburetor deposits. Any type of vehicle, engine, or bench test data may be acceptable for demonstration of carburetor deposit control, provided that a reasonable level of test quality was maintained per industry practice. Since the control of port and throttle body fuel injector deposits requires a greater degree of detergent effectiveness than the control of carburetor deposits, EPA may also accept port and throttle body fuel injector deposit control test data as adequate demonstration of an additive's ability to control carburetor deposits.[14]

EPA prefers that carburetor deposit control test data be collected using leaded fuels, but may also accept data collected using unleaded fuels, provided that the data on detergent performance in unleaded fuels can be shown to be indicative of its performance in leaded fuels. The guidelines for evaluating the adequacy of test fuels used in carburetor deposit control testing otherwise parallels those for IVD/PFID control testing. As for unleaded gasoline, specially blended test fuels will be acceptable provided

[14] See the NPRM for a discussion of the relative difficulty of controlling port fuel injector deposits, throttle body injector deposits, and carburetor deposits through the use of detergent additives.

they are reasonably typical of in-use gasoline in its tendency to form such deposits (or more severe than typical in-use fuels). As an example, EPA will likely consider a test fuel acceptable for demonstration of carburetor deposit control if the key fuel parameters identified as affecting a gasoline's tendency to form carburetor deposits (sulfur, olefins) are at least at average levels.[15]

D. Summary and Analysis of Comments

1. Applicability

Public comment on various aspects of EPA's proposal regarding the applicability of the proposed detergency requirements are discussed below by topic. There was no objection to EPA's proposal that gasoline detergency requirements would apply to all gasoline, whether used in motor vehicles on nonroad vehicles, except where noted.

a. *Leaded Gasoline.* Summary of Comments: The public comment opposed the applicability of the proposed detergency requirements to leaded gasoline. The comment stated that leaded gasoline would be obsolete in 1995 and that such fuels represent only a tiny share of total gasoline used. The comment further stated that, in leaded gasoline, the use of deposit control additives that are formulated to control fuel injector and intake valve deposits in modern engines per EPA's proposal would not provide benefits in improved performance or emissions control commensurate with the added cost associated with their use. It was stated that leaded fuels are used in older carbureted engines where the additional detergency protection provided by the use of PFID/IVD control additives would have no effect on performance or emissions over that which is achieved by the use of less expensive carburetor-type detergents. The comment further noted that it is current industry practice to use carburetor-type detergents in leaded fuels.

Analysis and Conclusion: EPA agrees that adequate deposit control can be achieved in leaded gasolines by the use of either carburetor-type detergents or IVD/PFID detergents. Engines that use leaded gasoline are typically carbureted and employ less sophisticated emissions control technology than those that use unleaded gasoline. The control of carburetor deposits can be achieved with the use of relatively unsophisticated and inexpensive carburetor-type detergents at low concentrations or with either PFID or PFID/IVD control additives at concentrations lower than required for engines that use unleaded gasoline. In addition, intake valve deposits are not likely to increase the emissions in engines that use leaded gasoline.[16] However, EPA disagrees with the comment that leaded gasoline should be exempted from the requirements of today's regulation. Leaded gasoline will still be available for non-road applications, and the fact that it is current practice to use carburetor-type detergent additives does not mean this practice will continue in the absence of regulation. Thus, EPA believes that it would be more appropriate to tailor the detergency requirements that must be met in leaded gasoline to provide that adequate protection is achieved without additive overuse and undue cost. As described above in section III.C, this final rule provides an option for leaded gasoline, allowing the use of either an IVD/PFID detergent or one capable of controlling carburetor deposits.

b. *Gasoline used for Military Purposes.* Summary of Comments: Public comment was in support of EPA's proposal to require gasoline used for military purposes to comply with the proposed detergency requirements. Comments from automobile manufacturers supported this position by stating that many military vehicles are subject to the same deposit control concerns as civilian vehicles. The Department of the Army in its response to issues raised at the public workshop on the regulation of detergent additives did not oppose the applicability of detergency requirements to military fuels (Docket A–91–77, item I–D–01). No comment was received from the Department of Defense (DOD) on this issue.

Analysis and Conclusion: EPA agrees that many military vehicles are subject to the same deposit control concerns as are civilian vehicles. Given that there was no comment indicating otherwise, the final rule makes gasoline used for military purposes subject to the detergency requirements.

c. *Racing Gasoline.* Summary of Comments: Public comment was divided on whether racing gasoline should be covered by the proposed requirements. Automobile manufacturers supported their position that racing gasoline should not be covered by stating that racing engines are frequently rebuilt and the racing drivers take appropriate steps to prevent the formation of deposits. The comment from the petroleum industry that racing gasoline should be required to comply with gasoline detergency requirements was not elaborated upon.

Analysis and Conclusion: EPA believes that, given the short lifetime of racing engines, the frequent maintenance that is performed on such engines, their relatively unique design, and the fact that significant mileage accumulation must occur for deposits to form, it is unlikely that deposits accumulate to any appreciable degree in racing engines. Therefore, EPA believes that it is appropriate to exempt racing gasoline from compliance with the detergency requirements adopted in today's rule since the added cost would not be likely to result in a commensurate emissions benefit. EPA defines racing gasoline to be gasoline that is specially blended for racing purposes, is segregated from other gasoline, and is delivered directly to racing facilities. Gasoline that does not meet this definition will not be considered racing gasoline for the purposes of exemption from the requirements of this regulation.

d. *Marine Gasoline.* Summary of Comments: Public comment supported the applicability of the proposed detergency requirements to marine gasoline. No specific supporting details were provided to support this position.

Analysis and Conclusion: EPA continues to believe that marine gasoline should be required to comply with gasoline detergency requirements. Marine gasoline is not specially formulated and is delivered to marine filling stations by the same distribution system that supplies gasoline to highway vehicles. Also, much of the engine technology used in marine engines is very similar to that employed for motor vehicles and hence similar concerns regarding the need for deposit control are likely to be present. Many current gasoline marine engines use carburetor technology. Leaded fuel for marine engines may employ the carburetor detergent additive option discussed above. Unleaded fuel using IVD/PFID additives will provide control for carbureted and fuel injected marine engines.

e. *Gasoline Used in Flexible-Fuel Vehicles.* Summary of Comments: Comment from the petroleum industry

[15] The reader is directed to the following SAE paper for a review of data which indicates that levels of sulfur and olefins impact a gasoline's tendency to form carburetor deposits: SAE Technical Paper 902105, "Deposits in Gasoline Engines—A Literature Review", Gautam Kalghatgi. As discussed previously, the following national 50th percentile levels were determined as part of the analysis performed for the NPRM: sulfur 0.015 weight percent, olefins 8.8 volume percent.

[16] For a review of published literature related to the control of carburetor, fuel injector, and intake valve deposits the reader is directed to SAE Technical Paper 902105, "Deposits in Gasoline Engines—A Literature Review" Gautam Kalghatgi, and the NPRM.

stated that available data indicate that in-use problems with fuel filter plugging in flexible-fuel vehicles which were suspected to be caused by an incompatibility of gasoline detergent additives in flexible fuel vehicles are in fact caused by the corrosion of incompatible metal parts in the fuel distribution and dispensing system.

Analysis and Conclusion: EPA is also aware of data brought forward in the context of investigations made by the Coordinating Research Council (CRC) which indicate that the filter plugging in flexible-fueled vehicles that had been attributed to the use of gasoline detergent additives is actually caused by the corrosion of incompatible metal parts in the fuel system. No public comment expressed any current concerns regarding the use of gasoline detergent additives in flexible-fueled vehicles. Therefore, there appears to be no reason to exempt the gasoline component of alcohol blends such as M85 and E85 from compliance with this regulation. EPA believes that this approach is beneficial because gasoline detergent additives are also likely to provide a level of deposit control in flexible fuel vehicles since the technology used in such vehicles is very similar to that employed in gasoline-fueled vehicles. Data brought forward as the result of activity by the CRC also have highlighted the need for deposit control in flexible-fueled vehicles to maintain proper vehicle performance.

f. *Gasoline Used for Research and Vehicle Certification Purposes.* Summary of Comments: The public comment stated that gasoline used for emissions certification purposes should be exempt from detergent requirements since such gasoline is used only for brief periods in the engine. The comment also stated that gasoline used for emissions durability demonstration should be required to contain a detergent additive. Public comment agreed with the Agency position that test fuels for research and developmental purposes should be exempted from the detergency requirements of today's rule. However, these comments stated that the procedures to obtain an exemption from EPA must be streamlined. Comments related to research exemptions are discussed in Section IV.

Analysis and Conclusion: The applicability of detergency requirements to gasoline used for vehicle certification was not addressed in the NPRM. The Agency agrees with public comment that the gasoline emission test fuel used for emission certification and fuel economy vehicles should be exempt from the gasoline detergent requirements adopted today. Therefore, no changes are made to the current test fuel specifications found in 40 CFR 86.113–94(a)(1). Such gasoline is used only for brief periods in new vehicles and hence there is little likelihood of a deposit-related emissions impact.

No comments were received specific to methanol certification test fuel. However, the rationale that supports exempting gasoline emissions certification fuel from the requirements of this rule also applies to the gasoline portion of methanol emissions certification test fuel. Therefore, the gasoline portion of methanol emissions certification test fuel will be exempt from the gasoline detergency requirements of today's rule.

Today's action will require the service accumulation fuel used in gasoline-fueled vehicles and the gasoline portion of the service accumulation fuel used in methanol-fueled vehicles to meet gasoline detergency requirements. This is consistent with (1) Public comment that the emissions certification durability fuel should continue to contain a deposit control additive package; (2) the current provisions of 40 CFR 86.113–94(a)(2), which state that "unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation for petroleum-fueled Otto-cycle vehicles"; and (3) the current provisions of 40 CFR 86.113–94(a)(3) and (b)(4) which require methanol fuel used for service accumulation of Otto-cycle and diesel-cycle methanol-fueled vehicles be "representative of commercially available methanol fuel". As previously discussed, today's regulation will require that the gasoline portion of methanol fuel comply with gasoline detergency requirements.

2. Interim Registration Requirements

Public comment supported the need for an interim detergent registration program with simplified requirements to allow industry adequate time to comply with the vehicle testing requirements and other provisions of the detergent certification program. Comments related to specific provisions of the proposed interim registration program are discussed below by topic.

a. *Need for the Demonstration of Both PFID and IVD Control Performance.* Summary of Comments: As a condition of certification under the proposed detergent certification program, EPA proposed that the ability of a detergent additive to control both intake valve deposits (IVD) and fuel injector deposits (PFID) to specified performance standards must be demonstrated through separate vehicle-based tests. Public comment was mostly in favor of this approach, although one commenter stated that requiring fuel injector deposit control testing was unnecessary because demonstration of adequate intake valve deposit control also ensured proper fuel injector deposit control. Although this comment was directed at the proposed vehicle testing requirements under the detergent certification program, it is also applicable to the interim program requirements for supporting data to substantiate detergent performance.

Analysis and Conclusion: For many detergent additives, demonstration of intake valve deposit control will also ensure adequate control of fuel injector deposits. However, some detergent-active chemicals may be effective for IVD alone, and thus EPA continues to believe that separate PFID control performance data is necessary. This approach is supported by the weight of public comment, which agreed that both PFID and IVD control performance tests are necessary to determine if effective deposit control is achieved. In fact, ASTM is currently completing development of a standard vehicle-based test procedure for PFID and the Coordinating Research Council is working on an updated PFID-test procedure for the future. These activities provide further evidence that the affected industry also considers PFID control performance tests to be necessary in addition to IVD tests.

b. *Additive Qualification Under the Interim Program.* Summary of Comments: Comments from the petroleum and additive industry generally supported the acceptability of CARB-certified detergent additives to satisfy federal detergency requirements under the interim program. Comments from automobile manufacturers stated, however, that a certification under California's detergent additive program should not be allowed to serve as proof of performance for non-California gasolines after 1996, when California's Phase II reformulated gasoline program goes into effect. These comments stated that California Phase II reformulated gasoline is likely to have a significantly lower tendency to form deposits than gasoline in the rest of the country and hence demonstration of performance under CARB's program after 1996 would not provide adequate deposit control for non-California gasoline. These comments from automobile manufacturers were primarily focused on issues related to additive qualification under the proposed detergent certification program but are also relevant to additive qualification

under the interim program since the interim program is now projected to continue until June of 1996.

Commenters were divided on what criteria to apply under the interim program for additives not certified by CARB. Comments from the petroleum industry supported the proposed use of chemical criteria along with the requirement that the additive be used at no less than the additive manufacturer's recommended minimum keep-clean treatment rate. These commenters stated that test data to demonstrate the effective performance of detergent additives was not necessary under the interim program. This position was not discussed in depth.

Comments from the additive manufacturing industry opposed EPA's proposed approach for non-CARB certified additives and stated that EPA must insist on some basis in engine or vehicle test results to support a manufacturer's recommended minimum treatment rate. These commenters argued that there is no established absolute relationship between additive chemistry and deposit control performance and that belonging to one of the four proposed chemical classes would provide no assurance of satisfying the statutory requirement. Concerns were voiced that the proposed chemistry-based interim program requirements, without a requirement for supporting test data, would allow unscrupulous manufacturers to concoct inexpensive additives for quick profit that could have little or no efficacy in controlling deposits. These commenters also stated that an additive with demonstrated effectiveness in controlling deposits should not be precluded from use because it does not belong to one of the four chemical classes.

Comments from additive manufacturers further stated that all responsible detergent manufacturers will have test data available to support claimed deposit control effectiveness. One commenter suggested that EPA require at least two different tests for both IVD and PFID control performance, both at the recommended treatment level, before an interim certification is granted.

Analysis and Conclusion: EPA agrees with the commenters that it is appropriate to allow the use of CARB-certified detergent additives to satisfy federal detergency requirements in the entire United States under the interim program, provided that the certification was not obtained for California Phase II reformulated gasoline (RFG). EPA agrees that the introduction of California Phase II reformulated gasoline (RFG) requirements effective in March, 1996 may cause gasoline sold in California to be significantly less severe in deposit-forming tendency than gasoline used in other areas of the nation. Thus, the introduction of California Phase II gasoline may result in CARB certifications at a significantly lower concentration for a given detergent relative to earlier CARB certifications. Therefore, detergents certified under the CARB program for use in California Phase II RFG may not provide adequate detergency protection for gasolines sold outside of California and, under this final rule, may only be used to satisfy federal detergency requirements in gasoline sold in California.

EPA agrees with the additive manufacturers that the proposed chemical compositional criteria would not adequately ensure that effective detergent additives are used under the interim program and could prevent the use of otherwise suitable additives unless they are certified under CARB's program. EPA has reviewed the available literature and cannot confirm that the proposed chemical compositional criteria would assure detergent efficacy. Although many commonly used detergents belong to the four chemical classes which EPA proposed would be acceptable, relatively minor differences in composition which are not addressed by the compositional criteria could result in a significant change in deposit control efficiency and additive cost. Also, it is of course possible that an effective detergent could be introduced which does not fall into one of these four classes. Thus, EPA agrees that claims of keep-clean fuel injector and intake valve deposit control must be based on some form of engine or vehicle test data.

To provide the flexibility needed under the interim program, it is necessary to evaluate the adequacy of supporting data on a case-by-case basis. Otherwise, if EPA were to codify strict or limited criteria by which test data were to be evaluated for adequacy, much of the available data could be precluded from use due to the diversity of the deposit control procedures that have been used. This would be inconsistent with the aims of the interim program. Therefore, EPA will request and evaluate the adequacy of deposit control test procedures, and quality assurance and quality control procedures used during testing, on an individual basis, using the criteria discussed earlier.

Public comment largely supported the validity of the fuel parameters that EPA proposed to use to define the tendency of gasoline to form deposits (sulfur, olefins, aromatics, T–90, and oxygenates) although there was some conflicting comment regarding the relative importance of these parameters. Based on the general agreement regarding the use of these parameters, EPA believes that it is appropriate to use them to evaluate the tendency of the test fuels used in the supporting data procedures. However, since no specific test fuel parameters were proposed specifically for the interim program, any test fuel that is reasonably typical in its tendency to form deposits will be acceptable for the purposes of the interim program.

The guidelines that will be used by EPA to evaluate whether detergent additive performance data is sufficient are discussed in Section III.B. EPA's intention in establishing these guidelines is to allow the use of any credible vehicle, engine, or bench test data to support claims of additive performance under the interim rule.

c. *Performance Demonstration for Different Versions of the Same Detergent Package.* Summary of Comments: Comment from additive manufacturers stated that EPA should allow the same test data to be used to demonstrate the performance of all versions of the same detergent package. They stated that it is common industry practice to vary certain minor nondetergent components in a detergent additive package without changing the active deposit control components of the detergent package. The commenters further stated that it would be burdensome and redundant to require performance data on each separate variant of a detergent additive package. While this comment pertained specifically to the requirements of the proposed full detergent certification program, it is also relevant to the requirements for supporting data under the interim program.

Analysis and Conclusion: EPA agrees that separate performance tests should not be needed for multiple detergent additive packages which contain the same active detergent ingredients in different concentrations, provided that the minimum recommended treat rate specified in the registration information for each additive package properly accounts for the variations in concentration. Specifically, for each registered detergent package which the manufacturer intends to support with a single set of test data, the final concentration of active detergent ingredients (resulting when the detergent package is added to gasoline at its respective minimum recommended treat rate) must be no less

than the minimum concentrations shown to be effective by the testing.

In summary, any variation affecting the active detergent ingredients of an additive package, whether affecting the composition or the concentration of such ingredients, requires generation of a separate detergent registration. However, separate supporting data are needed only if the actual chemical identity of an active detergent ingredient is changed. If only the concentration of active detergent ingredients is changed from one detergent package to another, then separate supporting data are not required so long as the recommended treat rate is changed accordingly.[17]

However, it is not always possible for EPA to discern which components of an additive package are important to deposit control effectiveness. Detergent additive packages may be composed of numerous components that provide different functions in addition to deposit control. These components may potentially include: the detergent, a carrier oil necessary for detergency action to take place, an antioxidant, a corrosion inhibitor, a metal deactivator, and a handling solvent. Additive manufacturers commonly vary nondetergent active components in response to market needs and to tailor the flow characteristics of the detergent package to seasonal variations in temperature. Thus, this final rule requires detergent additive registrations to specifically identify all active ingredients.

d. *Reporting Requirements, Confidential Business Information.* Summary of Comments: Comments received from additive manufacturers stated that information on the chemical composition of the detergent additive(s), including the identity and minimum concentration of each component in the detergent package, are highly confidential trade secrets. Although useful to EPA's enforcement purposes, it would be inappropriate for EPA to compel additive manufacturers to share this data with their fuel marketer clients. The commenters suggested that, to protect the confidentiality of trade secrets, EPA should require fuel registration submissions to contain the name of the additive as registered under 40 CFR part 79, and that the information needed regarding the chemical composition of the detergent additive could then be accessed by EPA through review of its part 79 registration files. The comment also stated that EPA should not implement duplicate reporting requirements, but rather should rely on registration information provided under 40 CFR part 79.

Additive manufacturers were not opposed to the proposed requirement that a suitable test procedure be made available to EPA to identify the composition of the detergent additive in its pure state. However, their concerns regarding the confidential nature of additive compositional data also apply to additive identification test procedures, since these procedures may be tailored to the additive type targeted for evaluation. Thus, they objected to the proposed process whereby EPA would seek the detergent identification procedure from the fuel manufacturer, who would in turn be expected to obtain it from the additive manufacturer. Finally, additive manufacturers stated that the detergent additive treatment rate is competitively sensitive information that should not be made part of the public record.

Analysis and Conclusion: EPA recognizes the confidential nature of additive compositional data and agrees that additive manufacturers should not be required to provide such information to their fuel marketer clients. EPA further agrees that the Agency could access the detergent registration information and, if it is adequately and correctly identified, link it to the associated fuel registrations for purposes of this program. However, the registration data supplied by manufacturers under part 79 in the past has not always been of sufficient quality, detail, and scope to allow its use for this program's purposes. To remedy this shortcoming, the detergent registrations submitted under 40 CFR part 79 must meet specified data quality criteria if these additives are to be eligible for use in complying with the detergency requirements in today's notice. For example, additive manufacturers must meet minimum requirements on additive compositional data, must obtain a separate registration under 40 CFR part 79 for each significantly different formulation of their additive package, and must report their recommended minimum treatment rate to control either PFID and IVD or carburetor deposits (see Section III.B.1). Obviously, each detergent additive product registered by an additive manufacturer must be assigned a unique trade name so that EPA can properly link specific detergents to the additive information supplied by fuel manufacturers in their detergent gasoline registrations.

To address additive manufacturer concerns regarding the confidentiality of detergent identification procedures, this final rule provides that, if EPA's enforcement responsibilities call for such a procedure, then EPA may require it to be submitted by the detergent registrant rather than the fuel manufacturer. EPA's authority to take this action is further supported by section 211(b)(2), which requires the F/FA registrant to provide such information, and by section 114 of the CAA, which provides that EPA may require the submission of information if it is necessary to implement the requirements of the CAA.

EPA recognizes that, to address the CBI concerns of additive manufacturers, the availability of information on detergent additive treatment rates should be restricted to those parties who have a need to know such information to fulfill their obligations under this rule, e.g., fuel manufacturers and other additive manufacturers who list the additive as a component of their gasoline or secondary additive product, respectively. EPA fully intends to honor this restriction, unless enforcement and/or appeal procedures require EPA to reveal a contested treat rate publicly.

IV. Interim Program Enforcement Provisions

A. Introduction and Overview

Today's rule adopts the general interim program enforcement scheme proposed in the NPRM. It incorporates the following major elements:

(1) Gasoline must be additized pursuant to a part 79 detergent registration, and must meet registration specifications as to detergent composition, minimum detergent concentration, and use. In addition, the detergent must comply with part 79 composition specifications in its pure (unadditized) state.

(2) Detergent blenders (as defined by this rule) must perform volume accounting and reconciliation procedures to determine the accuracy of their detergent additization. The sale or transfer of additized product that fails to conform to the detergent's part 79 minimum concentration rate, as established through the mandatory reconciliation procedures, is prohibited. Product reconciliation records must be maintained for at least 5 years.

(3) Each detergent equipment system measuring the amount of detergent added to gasoline by automated detergent blending facilities must be

[17] An exception to this provision is the case when an additive manufacturer submits two registrations with the same detergent ingredients, but with differing recommended treat rates—one for use in controlling carburetor deposits and one for use in IVD/PFID control. In this case, data supporting the effectiveness of the carburetor detergent concentration could not be used as evidence of the effectiveness of that concentration in controlling PFID/IVD.

calibrated every calendar quarter. Such systems must also be calibrated whenever the composition of the detergent package being measured is changed. Calibration records must be maintained by the blender for at least 5 years.

(4) All parties in the gasoline and detergent distribution systems must transfer to receiving parties product transfer documents with necessary additive information. Receiving parties have the obligation to obtain such records. These records must be maintained by transferring and receiving parties for at least five years.

(5) Presumptive and vicarious liability are the cornerstones of the liability scheme for the detergent program, as they are for other major EPA fuels programs. Certain parties will be required to establish the existence of quality assurance, product testing, and/or contractual oversight programs, as part of establishing their defenses to liability.

An overview of these key enforcement provisions follows below.

1. Part 79 Registration Conformity

In order to be additized in conformity with the interim detergent program, gasoline must be blended with detergent that complies with both the chemical composition and the concentration specifications of a part 79 detergent registration. Except as described previously in Section III.B.2, the detergent package's concentration in the gasoline must not be less than the manufacturer's minimum recommended concentration as specified in the additive registration.

A detergent registered under part 79 for the control of only carburetor deposits may be used only with leaded gasoline. If a detergent is registered with one concentration for the control of carburetor deposits only, and a higher concentration for the control of port fuel injector and intake valve deposits, then the lower concentration may only be used with leaded gasoline while the higher concentration may be used with either leaded or unleaded gasoline. Otherwise, during the interim program, any registered detergent, with the exception of certain detergents certified by CARB for use in California Phase II reformulated gasoline (see discussion in Section III.B.c) may be used with any registered gasoline. As a caveat, however, part 79 fuel registrations must specify the specific additive products to be included in the fuel formulations. A fuel registration that fails to include such specification is in violation of the part 79 registration requirements.

Today's rule addresses the problem of certain components, such as oxygenates or raffinate, which are added to gasoline after the refining process and must be additized at some point before being added to gasoline to be sold to an ultimate consumer. These post-refinery components may be additized separately from the gasoline to which they will ultimately be added, provided that they are additized with a registered detergent at no less than the concentration specified for gasoline.

Under today's rule, an additized gasoline may properly be commingled with another gasoline which has been additized under a different part 79 registration, provided that each has been separately, properly additized.

If a detergent blender discovers that it has under-additized a batch of gasoline, the blender may correct the problem before the product is transferred. The detergent blender may add more of the same detergent that was originally added to the under-additized batch, bringing the batch up to the compliance concentration rate, provided the product has not been transferred, and provided that the blender maintains documentation of the correction.

For example, if a batch of unleaded gasoline was additized at a concentration rate applicable to the control of carburetor deposits only (and thus restricted to leaded gasoline), the detergent blender could add more of the same detergent so that the treat rate equals the higher concentration specified for use of that detergent with unleaded gasoline. This must occur prior to the product's transfer to another party, and must be fully documented. This remedy would only be appropriate if the same detergent was registered as effective at two different rates for the two different products.

2. Volume Reconciliation

The interim detergent program requires detergent blenders to regularly reconcile the volume of detergent used with the amount of gasoline or post-refinery component additized. In the NPRM, this accounting procedure was called mass balance accounting, a typical industry nomenclature. In this final rule, however, in response to comments discussed below, the reconciliation will be identified as volumetric additive reconciliation ("VAR").

Under the VAR requirements promulgated today, blenders must use a specified formula, under which the actual concentration of detergent used in the compliance period is compared to the correct concentration of detergent that should have been used according to the concentration specified in the fuel registration. Manual detergent blenders, who have the ability to ascertain the exact amount of detergent used in each blend, will be required to perform and record the VAR calculations for each blend. Automated blenders, whose automated recording equipment may not be able to record per-batch additization, will be required to perform and record the VAR calculations on a monthly basis.

In order to ensure that automated detergent blenders can accurately measure their detergent use, today's rule requires that these blenders calibrate their detergent additization systems at the start of every calendar quarter, *i.e.*, in the months of January, April, July, and October, and at any time that the detergent package is changed.

Whenever the required VAR procedures reveal an averaged under-additization of the blended product, a VAR standard violation has occurred. VAR violations also exist if investigation shows that the detergent blender inaccurately performed the VAR calculations in a way that masks under-additization, if VAR records are not created or maintained as required by today's rule, and if the required calibration procedures are not performed.

Parties should be aware that violations of today's rule can occur outside of VAR calculations. For example, it is a violation of this rule to blend a detergent registered only for control of carburetor deposits into unleaded gasoline. As discussed above, such detergent should only be used with leaded product. Similarly, it is a violation of today's rule for any party to sell gasoline which is inadequately additized, even though that party might not have been involved with the VAR procedures.

As in all cases of presumptive liability under the interim detergent rule, potentially liable parties in these situations have the right to raise affirmative defenses. They can also assert, where appropriate, that a violation has not happened, such as when they can establish that proper VAR averaging procedures had been followed by the automated detergent blender for the gasoline in question, and that no irregularities beside low single batch detergent concentration existed.

3. Product Transfer Documents

Under today's rule, each transfer of gasoline, detergent or detergent-additized post-refinery component from one party to another must include the transfer of a product transfer document. This document must identify the

product being transferred and its additization status, and must contain other important information to facilitate both proper additization of the product and EPA's ability to confirm that proper additization has taken place.

4. Liability and Defenses

Today's rule establishes a scheme of liability for violations that is similar to existing liability schemes in other fuel programs administered by EPA, such as the fuel volatility program and the reformulated/conventional gasoline program. EPA decided to erect a similar structure in this rule because the Agency believes that such liability schemes have been demonstrated to work successfully in other fuel programs.

Under today's rule, all parties in the distribution chain prior to the point at which a violation is discovered are presumed to be liable for gasoline non-conformities (other than VAR violations), detergent non-conformities, and detergent-additized post-refinery component non-conformities. In addition, each party who fits within the regulatory definition of "detergent blender" promulgated today is presumed to be liable for a violation of the VAR requirements discussed above. For failure to meet product transfer document requirements, any party who owns, leases, operates, controls, or supervises the facility at which the violation was found will be presumed liable.

Any party who is held presumptively liable for a violation of this rule can rebut that presumption by successfully establishing an affirmative defense. In general, to establish an affirmative defense, a party must show that it did not cause the violation and that product transfer documents met applicable requirements when the product left the party's control. Specific additional affirmative defense requirements pertaining to particular parties in the gasoline and detergent distribution chain are described below.

Under today's rule, refiners are subject to vicarious liability for violations that occur at branded facilities, including VAR violations as well as non-conformity violations affecting gasoline, detergent, and/or detergent-additized post-refinery component. Branded refiners must establish, as an affirmative defense to such liability, (1) That they did not cause the violation, and (2) that product transfer documents account for the product and indicate that it met the relevant requirements. In addition, they must establish either: (1) That the violation resulted from an act in violation of law, or of sabotage or vandalism, or (2) that the violation occurred despite a contractual obligation designed to prevent such violation, and that compliance with the contractual obligation was monitored by an adequate oversight program.

Under today's rule, detergent manufacturer is defined as "any person who owns, operates, leases, controls, or supervises a facility that manufactures detergent." Detergent manufacturers are subject to presumptive liability for non-conforming detergent, gasoline, and detergent-additized post refinery components, as described above. They can rebut the presumption of liability for such violations by establishing an affirmative defense. The required elements of such an affirmative defense under this rule are as follows: (1) Product transfer documents that indicate conformity with applicable requirements, (2) test results that indicate conformity of detergent with applicable requirements when it left the manufacturer's control, and (3) demonstration that adequate blending instructions were supplied to the customer.

Under this final rule, carriers of detergent and gasoline may also be held liable for violations, since they are an important component of the distribution chain of detergent and detergent-additized gasoline, and have the potential to cause violations of this rule.

Gasoline carriers are subject to liability for all violations discovered at their facilities. Carriers of gasoline are also subject to liability for non-conformity of such gasoline discovered downstream, provided that EPA satisfactorily demonstrates that the carrier caused the violation. In addition, gasoline carriers are also liable for detergent-additized post-refinery component non-conformity and detergent non-conformity discovered downstream, if they dispensed, supplied, stored or transported any such component or detergent found to be in violation, and if EPA can demonstrate that the carrier caused the violation.

Detergent carriers are also subject to liability for certain violations of this rule, since they have the potential to cause non-conforming detergent to be introduced into commerce. The role that detergent carriers play in the product distribution chain provides them with significant control over the detergent that is subject to the requirements of this rule.

Detergent carriers, like gasoline carriers, are subject to liability for all violations discovered at their facilities. Under today's rule, detergent carriers are also liable for detergent and gasoline non-conformity discovered downstream, if they dispensed, supplied, stored, or transported any of the detergent, or any of the detergent in the non-conforming gasoline, and if EPA can demonstrate that they caused the violation. In addition, detergent carriers are liable for detergent-additized post-refinery component non-conformity if they dispensed, supplied, stored, or transported any of the detergent portion of the non-conforming component, and if EPA can show that they caused the violation.

Carriers who are found to be in violation of any requirement of this rule have the right to establish an affirmative defense. To successfully establish an affirmative defense to liability for a violation found at its facilities, a carrier must show that it did not cause the violation, and that it complied with product transfer document requirements. For violations discovered downstream, carriers are only liable if EPA shows that they caused the violation.

Under this rule, manufacturers and carriers of post-refinery components will not be held liable for violations. This approach is consistent with other fuel programs administered by EPA where the addition of a post-refinery component to gasoline is relevant, such as the volatility and reformulated/conventional gasoline programs. In these other programs, the responsibility to ensure the appropriate addition of post-refinery components rests on the party additizing the gasoline, and not on the manufacturer or carrier of such components. EPA believes a similar approach is reasonable under today's rule, since additizing parties are likely to have the practical ability to ensure conforming additization of post-refinery components. It is important to note that the composition of post-refinery components is not proprietary information, and can be easily ascertained by sampling and testing. Therefore, EPA is not aware of any concern that additizers will not be able to obtain sufficient information about the composition of post-refinery component.

EPA believes that manufacturers and carriers of post-refinery components will have very little impact on the accuracy of the additization of such components, unlike manufacturers and carriers of detergents. The composition of post-refinery components is less important to the effectiveness of this rule than is the proper additization of the component itself and the proper blending of the detergent-additized post-refinery component with detergent-additized gasoline. EPA believes that

the requirements promulgated today provide sufficient control over these critical activities. Therefore, EPA has decided not to bring manufacturers or carriers of post-refinery components under the purview of this rule.

5. Exemptions

Parties who create fuels or additives for research, development or testing purposes (including emission certification testing) are exempt from the requirements of this rule, provided certain requirements are met. Racing and aviation fuel will also be exempt from the requirements of this rule, as discussed in more detail in Section IV.B.6, below.

The remainder of this section of the preamble discusses key changes to the detergent program from the provisions proposed in the NPRM, together with analysis of public comments on enforcement issues in the NPRM. Comments received that impact solely upon the detergent certification program will be addressed at the time the certification program is promulgated.

B. Analysis of Public Comments and Significant Rule Changes

1. Volumetric Additive Reconciliation (VAR)

One of the areas of major concern to commenters was the proposed product reconciliation requirements. Product reconciliation is important in the detergent enforcement program because it is difficult to determine compliance through sampling and testing. As previously mentioned in the NPRM, there does not presently exist a standardized test method to determine the identity and concentration of detergent in gasoline. It would therefore be difficult to make a sampling and testing program the cornerstone of detergent enforcement efforts.

Under these circumstances, required product reconciliation is a useful enforcement tool. It will be relied on as an alternative to an extensive testing-oriented program. EPA does, however, reserve the right to conduct sampling and testing to determine compliance with the interim detergent program in appropriate circumstances, such as in determining: the conforming identity of detergent in its pure state; the presence of lead in gasoline additized with detergent only effectively registered for use with leaded product; and assisting in determining whether VAR compliance standards have been accurately attained or if non-conforming gasoline is being sold.

In the NPRM, EPA proposed that detergent blenders had to conduct mandatory detergent reconciliations, called mass balance accounting, using one of three specified formulas. The detergent blender was required to use the formula applicable to the type of blending operation it used, *i.e.*, an automated detergent blending operation using meters on every injector; an automated operation that did not have meters on every injector; and a hand blending additization operation. The automated formulas required weekly reconciliations, while the hand blending formula required that a reconciliation be completed for each batch of product additized. If an automated blender altered the detergent concentration rate within the weekly compliance period, such alteration terminated the reconciliation period and required the start of a new period. Each formula required the detergent blender to account for transfers of detergent and gasoline into and out of inventory. Each formula also required the blender to record the opening and closing volumes of detergent and gasoline used in the accounting period.

The American Petroleum Institute (API) commented that the term "mass balance accounting" was inaccurate, because the proposed procedure did not incorporate temperature adjustments for product measurements and, without them, the accounting was actually an analysis of volume. API proposed that the name for the required accounting procedure be changed to volumetric additive reconciliation ("VAR"). EPA agrees, and the interim detergent program incorporates this change.

API also recommended that EPA adopt a more generic approach to VAR formula use, and adopt one comprehensive formula that would be applicable to all blenders. API expressed concern that the VAR formula should require the basic information necessary for EPA to determine that the correct detergent concentration was being attained, while being flexible enough to permit industry to use the additization procedures presently in place. EPA agrees that one simplified formula would be appropriate for all automated blenders. The final rule has therefore condensed into one comprehensive formula the two formulas previously proposed for VAR calculations for automated detergent blenders. The components of this automated formula are discussed below.

a. *General Description of the Automated Facility VAR Formula in the Final Rule.* Under the comprehensive formula of the final rule, automated detergent blenders must complete an additive reconciliation record for all of the product additized with each detergent used. At a minimum, one VAR record must be created each calendar month for each additive storage tank used. At the blender's option, the record may be completed for smaller, discrete additive system units, such as for each additive injector. If the same additive package in a detergent storage tank is being used in different concentrations for different products, *i.e.*, different treat rates for different grades of gasoline, then the automated blender will generally be able to combine the product additized under the different concentrations in the same VAR record. However, if the detergent has been registered with two different minimum effective concentrations, with the lower registered concentration being effective only for use with leaded product, then a separate VAR record must be created for the leaded product being additized at the lower, leaded-only rate.

Detergent blenders must indicate each detergent concentration for which their equipment is set at the beginning of the VAR period. Any changes in the concentration set rate(s) must either be recorded on the VAR document, or be made available on other documentation such as computer printouts. No concentration may be set lower than the minimum recommended concentration specified in the Part 79 detergent registration.

Automated blenders will be permitted under the interim program to adjust upward from the initially set concentration rate by as much as 10 percent within the same VAR period. If a rate is altered by more than 10 percent above the initially indicated rate, either at one time or cumulatively, then the VAR period terminates, and a new VAR record must be started as of that point.

Under the comprehensive formula for automated blenders, the blender is required to note the volume of detergent used from the storage unit, and the volume of gasoline and/or post-refinery component additized by the detergent from the measured unit. The blender will be required to indicate, either on the VAR form or on other documentation, such as computer printouts, which will be made available to EPA, the measurement figures from which these detergent volumes are derived, *i.e.*, the beginning and ending metered flow readings, the metered per-batch volume readings for the period, or other comparable metered readings; or the beginning and ending gauge inventory measurements, with corrections for additions to the storage tank and subtractions of unadditized product leaving the storage tank.

The actual concentration of detergent in additized product is then calculated,

and compared to the correct concentration, *i.e.*, the minimum concentration specified in the detergent's Part 79 registration (or as provided in Section III.B.2). Compliance period additization in which the actual concentration is equal to or above the specified concentration, is in compliance with the VAR standard. In addition to recording the comparison of the actual concentration with the Part 79 minimum registered concentration, detergent blenders, if they choose for the convenience of their own operators, may also indicate compliance comparison by percentage figures.

Hand blenders will remain outside the comprehensive automated formula and will have their own formula under the interim program. The automated formula requires monthly calculations, based on present limitations in the automated equipment measurement and recording capabilities of some automated blenders. Since manual blenders do not have these equipment limitations and can easily calculate per-batch additization, they will be required to compute VAR compliance on a per-batch basis. EPA would prefer that all blenders conduct per batch detergent reconciliation, since such frequent reconciliation would give much greater assurance that each batch of additized product is additized with at least the minimum concentration of detergent specified in the detergent's Part 79 registration. However, the equipment limitations of many automated blenders are acknowledged in this rule, and automated blenders are therefore permitted to conduct detergent reconciliations on a monthly basis during the interim period.

Hand detergent blenders require a separate formula for the additional reason that they often do not have access to the gasoline inventory or flow readings that are the basis of the gasoline volume figures in the automated formula.

b. *Detergent Measurement Equipment.* For the sake of clarity and simplicity, the interim program's comprehensive formula for automated blenders will be flexible enough to be used by automated blenders using a variety of detergent measuring equipment that is presently in use, namely, gauge measurement equipment, meters on every injector, or master metered equipment. The gauge system uses sight or stick measuring gauges to ascertain the level of inventory in a tank at a particular time. A metering measuring system is typically in one of two configurations, *i.e.*, either one meter per injector measures product flow running through each detergent injector, or there is a master meter which measures total flow, which is situated prior to the separation of the detergent lines running to the individual injectors.

The Agency considered requiring the use by all automated detergent blenders of metered detergent measurements in the VAR calculations, since meters are a more accurate measurement system than gauges. However, several commenters indicated that not all automated blenders presently were equipped with metered detergent measuring equipment, and EPA is not mandating the use of detergent metering during the interim detergent program. However, the Agency encourages and prefers the use of metered detergent measurements for the VAR calculations, and intends to request comment in the reopening notice about implementing a potential metering requirement in the final certification rule. This provision would require all automated blenders to use meters to measure detergent usage, and might also require the use of meters on each detergent injector.

The National Petroleum Marketers Association expressed concern that automated blenders might be required to perform detergent tank gauging at the beginning and ending of each VAR period, whether or not their system was also metered. This was not the intent of the proposed formulas, and the rule finalized today clarifies that either tank-gauged or metered measurements must be the basis of the detergent volume figures reported on the VAR record. Since there must be some numeric measurement as a realistic basis for the reported VAR detergent volumes, however, today's rule does require that either meters or gauges must be used.

c. *Use of Multiple Concentration Rates in One VAR Record.* Arco Refining Company commented that its additization equipment was capable of measuring and automatically switching to a variety of set concentration rates depending on the type of gasoline needing additization. One detergent package was sometimes used at different concentration rates, as needed for the different grades of gasoline being additized. Arco was concerned because the automated formulas proposed in the NPRM would require the creation of a new VAR calculation period every time the concentration rate was automatically altered. EPA agrees that this would be burdensome, and the Agency does not desire to penalize parties for acquiring newer equipment that can measure several concentration rates. Therefore, the interim program's automated formula permits automated parties to utilize different concentrations in actual usage, provided that only one physical detergent package is being measured, and provided that each concentration rate being used is indicated on the VAR record (except as discussed in the following paragraph). If any of the initial concentration rates are raised in the reconciliation period, the blender must follow the procedures described below.

The exception to the general principle that multiple concentration rates will be permitted to be measured in one VAR record concerns detergents to be used with leaded product. If a detergent has been registered with two minimum effective lowest concentrations, and the lower of the two is to be used solely with leaded gasoline, a single VAR record cannot be used to calculate compliance for both concentrations. This is because the actual concentration rate attained would have to be compared to two different lowest effective rates, which would make the formula meaningless. In order to determine if a VAR violation has occurred in the above circumstances, the blender would have to complete a separate VAR record for each concentration rate at which the detergent is registered for use. For this record to be accurate, the blender must separately measure the detergent being used at the lower rate. The blender could have a separate tank for the detergent so used, or a separate meter for it, or some other way to accurately distinguish the use of detergent at the lower concentration.

d. *Detergent Concentration Rate Adjustments.* The Agency is very concerned with preventing automated blenders from compensating for significant under-additization discovered in a compliance period by altering their concentration rate so as to significantly over-additize later loads in the compliance period. Additization of any load of gasoline below the minimum concentration is not acceptable, because the Agency wants to assure that all gasoline being sold to the consumer is appropriately additized. Over-additization of later batches of gasoline as compensation for prior under-additization is also inappropriate because of concerns that over-additization may contribute to automotive combustion chamber deposits.

To address this concern, the NPRM proposed that detergent blenders would not be permitted in a VAR period to alter the concentration rates that their additization equipment had been set for. In the NPRM proposal, if any such adjustment occurred, then the VAR period was terminated, and a new VAR period was required to be initiated.

API presented the results of an industry survey indicating that industry presently experienced an enormous range in ability to attain a VAR standard accurately. API suggested that EPA should institute the use of an enforcement tolerance in determining compliance with the VAR standard to acknowledge and account for the wide range in equipment variation in ability to ensure full accuracy.

For reasons discussed below, the Agency has decided that the use of an enforcement tolerance in the detergent regulatory context is inappropriate. However, the Agency acknowledges that without an enforcement tolerance, many detergent blenders would find it extremely difficult to attain the VAR standard without the ability to adjust detergent concentration rates throughout the compliance period. Consequently, the final rule will permit limited adjustment of concentration rates within the VAR period during the interim period. Extreme adjustments, however, will be prohibited, so that excessive swings in additization will not occur. In no event may any concentration rate be altered in any compliance period higher than 10 percent over the concentration specified as the initially set rate.

The 10 percent figure was chosen because the industry VAR survey results submitted by API reveal that at least 10 percent VAR monthly accuracy is already obtained by many automated blending parties (73 percent of company-owned responding parties, and 37 percent of systems operated by exchange agreement or third party terminals). Since many detergent blenders already attain a monthly VAR accuracy within 10 percent of target, the interim program reasonably prohibits automated blenders from altering their concentration rate above 10 percent of the target. This provides blenders with some flexibility in meeting the monthly compliance standard, while discouraging excessive fluctuations from the standard per-batch additization rate.

To assure that adjustments beyond 10 percent of the indicated concentration will not be made, the final rule requires that any adjustment beyond the 10 percent cut-off will terminate the VAR period, necessitating the start of a new VAR calculation. Blenders will be required to indicate on the VAR record each set concentration rate used at the beginning of the VAR period, and all changes to each rate that occurred during the period must be reported on the VAR record or otherwise be made available.

e. *Reconciliation Period.* EPA proposed that automated blenders must perform at least weekly detergent reconciliations. This final rule, however, permits monthly reconciliation periods. The vast majority of commenters urged adoption of the longer period. They asserted that a monthly period was more consistent with the reconciliation period presently being used by industry and the recordkeeping period required in the CARB detergent regulation. API presented evidence from its member survey indicating that none of the 2,199 exchange agreement or third party systems responding to its survey conducted reconciliation more frequently than monthly.

The Agency has decided to accept the monthly reconciliation period already being used by a majority of industry, rather than require a shift to a shorter period for the interim rule. One goal of choosing this period was to prevent lead time problems that parties might experience in implementing a weekly reconciliation period in time for the January 1, 1995 effective date of this rule.

EPA believes the monthly time frame provides reasonable assurance that individual loads will be additized properly. Although monthly averaging includes greater volumes than weekly calculations, and thus tolerates somewhat greater inaccuracy than weekly reconciliation, the number of additizations performed by the typical additization terminal per month is sufficiently small to ensure the results should reasonably approximate per-batch additization accuracy. In addition, EPA feels that the prohibition against altering the detergent concentration in the compliance period above 10 percent of the set concentration rate will further assure that significant per-batch under-additization will not occur.

However, EPA is not willing to further lengthen the VAR compliance period. Some commenters urged adoption of a quarterly reconciliation period, saying that a quarterly approach would be consistent with some other EPA record keeping requirements, such as the quarterly lead phase down and quarterly reformulated gasoline reporting requirements. EPA does not agree that quarterly reconciliation would be appropriate for detergent additization. First, the detergent program does not have the reporting requirements or the exhaustively detailed reconciliation requirements that exist alongside the quarterly reconciliation requirements found in the reformulated gasoline program. Second, a quarterly detergent reconciliation period would involve averaging approximately 2,500 truckloads for the typical terminal, so that a quarterly averaging period would not give sufficient guarantee that the gasoline being sold to the ultimate consumer was adequately additized as required by section 211(l). Even if the typical number of truckloads is actually somewhat smaller, as the National Petroleum Refiners Association argues, the large number of batches being additized over a quarterly period in the typical terminal is too great to permit reasonable assurance of adequate per-batch additization.

Although the Agency is promulgating a monthly reconciliation requirement in this rule, the Agency is still concerned about assuring as much per-gallon accuracy as possible in the final detergent certification rule. Some ideas being considered for the certification rule, in addition to the 10 percent concentration alteration cut off, involve creating a weekly compliance period and/or establishing a minimum per-gallon requirement that must be met in addition to meeting the averaged standard within the compliance period.

f. *Transfers of Unadditized Gasoline.* As was proposed in the NPRM, the transfer of unadditized gasoline from detergent blending terminals is not prohibited under this final rule. Information about such transfers, however, will be required to be recorded. The NPRM required transfers of unadditized product to be accounted for within the VAR formula. The interim program deletes this requirement from the formula itself. Such information about transfers from inventory is only significant to the accuracy of formulas based on inventory measurements. The new automated VAR formula permits measurements based on metered flow usage as well as on inventory changes. In cases of such metered measurements, information on inventory transfers is not relevant to the formula's accuracy. However, information about such transfers, outside of the formulas, is required to be compiled as a supporting document to the VAR records of all automated parties, since such information is vitally important to EPA in ascertaining that all product has been properly additized. In addition, any hand detergent blender which is a terminal must also compile this information.

g. *Equipment Calibration Requirements.* EPA received several comments about the quarterly calibration requirement for automated detergent blenders proposed in the NPRM. The National Petroleum Refiners Association urged EPA to clarify whether the calibration requirement

would pertain only to the detergent equipment meters, or also to the injectors. The Agency clarifies in this rule that it is the additization system, *i.e.*, the injector flow as measured by the meters, that must be regularly calibrated to ensure that the system's measurements are accurate. It is the additization system's accuracy as a whole that is important.

EPA is today finalizing the requirement proposed in the NPRM that the automated equipment be calibrated quarterly, in spite of the National Petroleum Refiners' request that calibration be required only annually. The detergent rule continues the quarterly calibration requirement because such calibration intervals should result in some realistic compensation for the temperature-related changes in equipment accuracy resulting from seasonal variations in detergent viscosity. Since it would be unrealistic and expensive to require continuous equipment calibration to compensate for every temperature-related viscosity change, a quarterly calibration requirement would at least give some assurance of accuracy of the VAR required measurements. It would also give assurance of timely correction of normal variations in equipment accuracy that occur over time.

EPA received industry comment that variations in viscosity between different detergent packages requires calibration of the additization equipment when detergent packages are changed, in order to maintain measurement accuracy. In response to this comment, the final rule requires automated blenders to calibrate their measuring equipment each time they change the detergent package being measured.

h. *VAR Enforcement Tolerance.* Many parties commented on the need for an enforcement tolerance to be used in determining VAR violations. After reviewing these comments, EPA reaffirms the position taken in the NPRM that enforcement tolerance for VAR violations would be inappropriate. The Clean Air Act does not require the Agency to establish an enforcement tolerance in the detergent program. Absent a specific directive from Congress, the matter of enforcement tolerance is left to the Agency's discretion, and EPA considers such a tolerance in the VAR context to be neither necessary nor environmentally beneficial.

The Agency has never announced an enforcement tolerance in its fuels programs for parties with primary control over attaining standards. Such tolerances have only periodically been established for downstream parties who have much less ability than primary parties to control accuracy. Furthermore, EPA fuels programs have never announced enforcement tolerances for parties with primary control when standards can be met through averaging, since averaging is a process that has built-in tolerance of deviations from the standard.

While API has submitted survey data to EPA indicating that many automated detergent blenders do not presently attain a high degree of VAR accuracy, this information does not at all confirm that, in the future, industry would not be able to fulfill an averaged compliance standard if it were legally required. EPA believes industry should be able to attain the VAR compliance standard over the reconciliation period. The interim rule will allow detergent blenders to correct, and even compensate for, mis-additizations that occur within the VAR period, provided that they do so within the 10 percent rate alteration limit. The averaging implicit in this flexibility is sufficient to permit responsible parties to meet the standard, provided that they implement reasonable quality control procedures. Therefore, EPA does not believe that an enforcement tolerance is appropriate here.

An enforcement tolerance is also not needed, nor would it be beneficial, in the hand blending situation, since hand blenders do not have to use variable mechanical equipment in their blending.

Industry commented about the need for enforcement tolerances in other areas involving enforcement standards proposed in the NPRM, such as in performance testing of detergents. None of these comments pertain directly to today's rule, since the rule promulgated today does not require specific detergent performance tests. However, if the presence of lead in gasoline being additized with a detergent effectively registered for use only with leaded gasoline should become an issue, testing of lead and phosphorus to determine the legal identity of leaded gasoline will be conducted by the Agency according to the specifications listed in Appendices B and A, respectively, of 40 CFR Part 80. No enforcement tolerance has been created in the past for lead or phosphorus testing, and none is being contemplated now.

i. *Over-Additization.* Under the proposed regulations, over-additization of gasoline was considered a violation of the VAR standard, since compliance with the proposed VAR formula only existed if actual usage of detergent equalled the required usage. In the NPRM, however, the Agency explained that it did not intend to treat over-additization as a violation, since data was not available establishing the point at which over-additization became environmentally harmful.

The final rule promulgated today clarifies this situation, and specifies that VAR accounting compliance occurs when the actual detergent concentration equals or exceeds the minimum concentration specified in the detergent's Part 79 registration. This clarification codifies EPA's intent that over-additization would not be considered a violation of the VAR standard. Both API and Amoco had commented that they did not support a limit on additization over the minimum treat rate.

Some auto industry commenters expressed fears that over-additization might result in an increase in combustion chamber deposits. As discussed in Section I.C, EPA is concerned about this matter, and intends to re-visit this issue in the near future. For the duration of this interim program, however, over-additization will not be considered a violation.

The Agency does not believe that our decision to permit over-additization in the interim period will result in the occurrence of significant over-additization. The expense involved with adding detergents to gasoline should mitigate against any significant overuse of detergents. However, the fact that over-additization cannot at this time be considered a violation should not be construed as approval by EPA of over-additization, since serious concerns do exist about the potential harmful effects of over-additization.

j. *VAR for Hand Blenders.* EPA also received comment about the formula proposed for hand blending detergent facilities. The National Petroleum Refiners Association informed EPA that, typically, carrier drivers do not have the information necessary to comply with the VAR calculation requirements proposed in the NPRM. EPA agrees with this comment, and has thus modified the formula for hand blending facilities to include only information that the hand blender must possess in order to additize properly, *i.e.*, the amount of gasoline or post-refinery component additized, the amount of detergent actually blended, and the Part 79 registered minimum recommended detergent concentration rate.

2. Record Maintenance Requirement

a. *Five Year Record Retention.* The NPRM proposed that all VAR and transfer documents required to be created under the detergent rule must be maintained for five years. Many

commenters requested that the proposed five year requirement be reduced because it was considered too burdensome. Western Independent Refiners Association also asserted that the proposed retention period violated the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 *et seq;* 5 CFR § 1320. Regulations promulgated under the PRA state that the Office of Management and Budget will not approve record retention requirements for periods greater than three years, unless an Agency can establish substantial need for a longer required retention period. Alternative retention periods suggested by commenters included three, two, or even one year.

In this rule, EPA is promulgating the five year record retention period. EPA is aware of the burden of retaining records for the five year time period, and has alleviated this burden by deleting the proposed "place of creation" record retention requirements in the final rule (see next section).

The five year retention period is necessary for several reasons. The first is the enforcement reality that there are an enormous number of gasoline facilities subject to enforcement under this rule. Typically, inspections at particular facilities will therefore be widely spaced. Under these circumstances, EPA needs to be able to deter detergent violations by having the ability to review records over a significant period. Secondly, EPA expects that the detergent program will be enforced, to a significant extent, through review of records, as no standardized test has yet been developed to identify detergent in gasoline. In the absence of the ability to conduct extensive testing, records become extremely important in determining violations, and the Agency needs to have extensive record review ability to effectively enforce the program. Finally, the five year period is reasonable because it corresponds to the five year statute of limitations typical for fuels enforcement violations. Pursuant to the regulations implementing the Paperwork Reduction Act, 5 CFR 1320.6, EPA believes that these factors demonstrate that there is substantial need for record maintenance beyond three years.

b. *Place and Manner of Record Retention.* The NPRM proposed that records must be retained in the place that they were created. It further proposed that VAR records must be maintained together with the transfer documents for the product covered by the VAR records.

Several commenters argued that industry should be able to maintain records centrally, or in any appropriate place, as long as the records were made available to EPA when requested. These commenters felt the proposed requirement that records be maintained at the facility where created was inconsistent with current business practices and was unduly burdensome. EPA agrees that the place of record retention should be left to the discretion of the regulated party, provided that the records are available for EPA inspection. The final rule reflects this revision.

National Petroleum Refiners Association disapproved of the proposed requirement that product transfer documents be maintained together with the mass balance (VAR) records with which they are associated. The National Petroleum Refiners argued that this requirement would necessitate a massive amount of burdensome sorting and collating of records. The intent of the proposed requirement was to help EPA in its auditing of the VAR records, by making easily accessible some of the primary records that support the validity of the VAR calculations. EPA agrees, however, that this collating requirement would produce significant space and labor costs for industry. Since other EPA fuels enforcement programs are effective without such a requirement, EPA has decided to delete this collating requirement from the interim detergent program.

3. Transfer Documentation

EPA proposed that product transfer documents be created and transferred with each transfer of detergent, gasoline, and post-refinery component. The product transfer documents would identify the product and provide important information about the product.

Several parties had comments about the proposed product transfer document requirements. Unocal Corporation argued that product transfer documents should not be required to be maintained at all, since the Agency was requiring mass balance (VAR) records to be created and maintained. Presumably, Unocal believed that VAR records documenting detergent blending would be sufficient to ascertain detergent program compliance. Western Independent Refiners Association made a similar argument that the CARB requirement of monthly compilation of suppliers and purchasers should be an adequate, less burdensome substitute for maintaining product transfer documents.

EPA disagrees with these comments. First, EPA has authority to require that regulated parties provide product transfer documents when they transfer detergent, gasoline, or detergent-additized gasoline to another party. Section 211(1) requires EPA to establish specifications for detergent additives. To ensure that detergents meet the specifications promulgated today, it is necessary to require transfer documents that properly identify the product to be provided with each transfer of the product.

In addition, section 211(c)(1) allows EPA to control the sale of any fuel or fuel additive if the Administrator determines that emissions from such fuel or fuel additive cause or contribute to air pollution that may reasonably be anticipated to harm the public health or welfare. As stated below in Section IV.B.4.d., this provision allows EPA to require that gasoline be additized to reduce harmful emissions. To ensure that gasoline is properly additized, it is necessary for EPA to require all parties to provide transfer documents that identify the product whenever the product is transferred to another party. Such documents are necessary to provide important information to receiving parties about blending restrictions. Further, transfer documents can establish the existence of violations that occurred prior to the detergent blending process, such as improper labelling of gasoline or detergent. An analysis of VAR records would not indicate such violations. Product transfer documents are an essential part of the primary records which can be used to verify the validity of the VAR records. EPA's experience conducting lead phase down audits confirms the necessity of assuring the retention of the primary records which are the basis for figures contained in reconciliation records.

Product transfer documents are also necessary to provide important information to receiving parties about blending restrictions. Furthermore, transfer documents can establish the existence of violations that occurred prior to the detergent blending process, such as improper labeling of leaded product. An analysis of the later VAR records would not detect such violations.

Finally, EPA does not expect the transfer document requirement of this rule to be unduly burdensome to industry. The reformulated gasoline rule already requires these documents, and transfer documents are already routinely transferred by industry in many product transactions. Typically, the added burden of this requirement will only involve some additional data requirements on already existing documents. Thus, this rule contains

requirements for both product transfer documents and VAR records.

Western Independent Refiners Association raised another concern about product transfer documents. The Western Refiners advised the Agency that fuels and fuel additives sent through pipelines are not always accompanied by documentation. These products are often fungible and they are not transported in discrete packages. Western Refiners argued that requiring the transfer of a product transfer document at the same time as the physical transfer of such product would be burdensome to those parties not presently simultaneously transferring both the product and the document.

EPA agrees that some parties in the gasoline distribution system may not presently transfer documentation at the same time as they physically transfer the product to another party. The Agency's position is that the information required by this rule to be supplied on the product transfer document is important to proper additization. It thus must be supplied to the receiving party in such manner, and within such time, as to give adequate notice of the relevant information. The Agency therefore believes that contemporaneous transfer may not always be necessary, although document transfer at or near the same time as the transfer of the product is expected.

It is important to clarify that the detergent program only requires the transfer of a product transfer document when custody or title to product is transferred from one party to another party. Such a document is not required to be created when product is merely being transferred, or even commingled, within one party's own organization.

As a further clarification, this final rule does not require transfer documents to physically accompany the product they cover at all times, as was a concern of one commenter. Parties who receive gasoline, detergent, or detergent-additized post-refinery components from other parties and who have received the transfer documents for such products, will be expected to produce, for EPA inspection, product transfer documents for any such product in their possession. The transfer documents need not, however, be attached to or stored in the same physical location as the product. Receiving parties must be prepared to account for product as it passes within their organizational structures, however, in order to establish that they are accurately producing the applicable transfer documents when requested.

The product transfer document requirements promulgated in this rule are much simpler than those proposed in the NPRM, since this rule does not contain certification restrictions. For example, gasoline transfer documents in the interim period need not include fuel-specific or PADD-specific information. Furthermore, product transfer documents for additized gasoline or post-refinery component are not required to identify the specific detergent used to additize the product. This requirement was deleted in response to an industry lead time concern about being able to implement this requirement in the product document software in time for the January 1, 1995 detergent rule implementation date.

Several parties commented about the required contents of product transfer documents. Koch Refining Company was concerned about the need to identify on a product transfer document each component base gasoline when several base gasolines have been commingled. EPA agrees that such multiple identification would be burdensome and unnecessary. In the interim program, only the type of regulated product, *i.e.*, base gasoline, detergent-additized gasoline, detergent, or detergent-additized post-refinery component, will be required to be listed. Thus, if product contains commingled base gasolines, the transfer document would only need to identify the product as base gasoline. However, if different types of covered product, such as base gasoline and detergent-additized ethanol, are added together, then the transfer document for the combined product must identify each of the combined components. It is necessary in the interim program rule promulgated today for the regulated parties and the Agency to know if unadditized product has been added to additized product.

The Chemical Manufacturers Association (CMA) urged EPA to clarify the proposed requirement to list "identity of product" on the transfer document. With this requirement, EPA intended that the generic type of transferred product regulated under the detergent rule must be specified, *i.e.*, base gasoline, detergent-additized gasoline, detergent, etc. See § 80.158(a)(5).

CMA further urged EPA to delete the requirement that time of transfer be listed on the transfer document. In the interest of streamlining transfer document contents, the Agency agrees to this request, especially in light of the fact that the reformulated/conventional gasoline program has also deleted this requirement. Date of transfer, however, is still required to be listed on each product transfer document.

Product transfer documents for leaded gasoline must identify the product as containing lead or phosphorus. This requirement is necessary because detergent registered for use only with leaded gasoline cannot be used with unleaded gasoline, as described earlier in this preamble. Such detergents can only be blended into gasolines whose transfer documents identify them as leaded.

Finally, API requested that EPA allow the use of approved product codes on transfer documents, as a means of compactly presenting the information required by the regulation. The intent is to streamline the space requirements for these documents. EPA appreciates industry's concern about lack of space on commercial documents and will consider special requests by regulated parties to use product codes on transfer documents. To be considered, such requests must demonstrate that all required information items will be included and that the information can be easily accessed and decoded by EPA.

4. Liability Issues

a. *Presumptive Liability.* The detergent rule's presumptive liability scheme is modeled after, and substantially similar to, the liability scheme already existing in previously-established EPA fuels programs, such as lead contamination, volatility, and diesel desulfurization, and in the reformulated/conventional gasoline program which is soon to be implemented. The rationale for the imposition of a presumptive liability framework is the same for the detergent rule as for the other rules. Typically, many parties handle and control gasoline, detergent, and detergent-additized post-refinery component. Much of the product is also fungible. It will, therefore, often be difficult for EPA to determine which party has caused a detergent program violation.

EPA must have the ability to hold presumptively liable all parties in the gasoline and detergent distribution networks that are involved in a particular violation, in order to effectively enforce the rule when multiple parties may have caused the violation. EPA's previous experience indicates that this type of enforcement scheme is highly effective. The comprehensive threat of liability is an incentive to all parties to comply with the regulation, and once a violation is found, to cooperate in determining which party actually caused the violation.

Several parties have commented that the detergent program should not be based on a presumptive liability scheme since this program is different than the other fuels programs which have this type of scheme. According to these commenters, detergent is typically blended into gasoline downstream, prior to transfer of the gasoline to the retail outlet. These commenters argue that such downstream additization means that upstream parties, contrary to the situation in other fuels programs, cannot cause detergent program violations. Therefore, they assert, upstream parties should not be held presumptively liable for detergent program violations, and liability should only be imposed if EPA can establish actual responsibility.

EPA agrees with the commenters that gasoline is typically additized at a terminal prior to its transfer to the retail outlet. EPA disagrees, however, with the further assertion that detergent program violations cannot be caused by upstream parties. Upstream parties may cause gasoline non-conformity violations in a variety of ways. For example, they may fail to indicate on a product transfer document that the subject gasoline is leaded, and they may fail to provide accurate information about blending restrictions to detergent blending parties. Upstream parties may also cause gasoline, detergent, or detergent-additized post-refinery component non-conformity violations by improperly manufacturing detergent or commingling it.

Upstream parties may thus cause detergent program violations in a multitude of ways and circumstances, and all the parties in the gasoline and detergent distribution system have the potential to cause such violations. Given the multitude of potential causes of detergent program violations, and given the fact that it is the regulated parties themselves who have the most knowledge of, and ability to know what happens in their distribution system, EPA believes that the imposition of a presumptive liability scheme is as essential in the detergent program as it is in the other EPA fuels programs. The interim program rule promulgated today, therefore, continues the NPRM's presumptive liability scheme.

In the case of VAR violations, however, upstream parties are relieved of presumptive liability under today's rule, because detergent blenders will typically be solely responsible for the accuracy of their own detergent blending and VAR calculations. This issue may be revisited, however, when the certification program final rule is issued, since other parties could cause VAR violations in specific circumstances. These circumstances include the failure of upstream parties to provide adequate blending instructions, and the participation and collusion of other parties in intentional mis-additization by a detergent blender.

(1) Detergent Manufacturers and Detergent Distributors. CMA commented that, even if EPA has the authority to regulate detergent manufacturers, they should not be subject to presumptive liability for violations that are discovered downstream, because they do not retain sufficient control over the detergent to cause such violations once it leaves their facility.

EPA does not agree with CMA's argument. The presumptive liability scheme in today's rule, as is true with similar schemes found in other EPA fuels programs, is not dependent upon the control upstream parties may have over downstream parties. Control over the activities of another is the basis for vicarious liability. Detergent manufacturers will not be subject to vicarious liability under today's rule.

On the other hand, the basis of presumptive liability in the EPA fuels programs, including today's rule, is that a multitude of parties have the ability to cause a fuels program violation, given the fungible nature of gasoline and the extensive number of parties typically involved in its distribution. Given the difficulty in establishing which party actually caused a violation under these circumstances, presumptive liability needs to be imposed on all parties who could cause the violation. Detergent manufacturers can cause detergent program violations discovered downstream in a number of ways. For example, they may improperly manufacture the detergent. In addition, they may fail to properly identify the detergent on product transfer documents, or to provide accurate blending instructions. Therefore, it is appropriate to include detergent manufacturers in the presumptive liability scheme of today's rule.

Further, detergent manufacturers will not be required to demonstrate, as an independent element of an affirmative defense to liability for a detergent rule violation, that they did not cause the violation. EPA believes that the demonstration that: (1) The manufacturer provided proper product transfer documents; (2) testing when the product left the manufacturer's control indicated compliance with registration specifications; and (3) the manufacturer provided accurate written blending instructions about minimum concentration requirements and, where relevant, leaded gasoline use restrictions, is sufficient in most situations to effectively establish that the manufacturer did not cause the violation.

The Agency, however, needs to acknowledge and provide for the fact that unusual situations will exist in which a detergent manufacturer could cause a violation even though it has established all the required elements of an affirmative defense to liability for that violation. For example, situations could arise in which there was complicity on the part of the manufacturer in intentional downstream mis-additizations, or in which the manufacturer provided inaccurate oral instructions.

Therefore, under today's rule, manufacturers will be liable for violations even when the above affirmative defense documentation elements are satisfied, if the Agency can establish that the detergent manufacturer actually caused the violation. This provision is necessary to ensure that a manufacturer who actually causes a violation does not escape liability for that violation, which recognizing that most manufacturers who meet the requirements of the affirmative defense stated above will not have caused downstream violations. EPA does not believe that any regulated party who actually causes a violation should ever escape the imposition of liability for that violation.

In the NPRM, EPA proposed that all parties in the detergent distribution system, including distributors of detergent, be subject to presumptive liability for non-conformity violations affecting detergent, detergent-additized gasoline, and detergent-additized post-refinery component. EPA received no comments disputing the imposition of such liability on detergent distributors. Recognizing that detergent distributors may cause nonconformity violations in a number of ways, EPA has retained the proposed detergent distributor liability scheme in the final rule. Examples of such violations include commingling of mislabeled detergent and transfer of inaccurate blending instructions.

(2) Detergent and Gasoline Carriers. The Truck Carriers correctly point out that the proposed carrier liability for violations discovered downstream is different than, and inconsistent with, carrier liability under the volatility and reformulated/conventional gasoline rules. Under those programs, carriers are only held liable for violations discovered downstream when EPA can prove that they caused the violation. In the proposed detergent program, however, carriers were to be presumed liable for downstream violations.

EPA agrees that this inconsistency is inappropriate, since carriers' legal relationship with their products is the same in the detergent situation as it is in other fuels programs. Therefore, carrier liability for downstream violations is changed in this final rule to be consistent with the other programs. Gasoline carrier liability under the volatility program, which is the model for carrier liability in today's rule, was upheld in the National Tank Truck Carriers case, supra.

b. *Liability for Failure to Comply with VAR Requirements.* Commenters expressed concern regarding who EPA would hold responsible for performing VAR accounting procedures, and who EPA would hold liable for violations resulting from failure to comply with the requirements for such procedures. Commenters noted that parties commonly enter into arrangements concerning the manner in which detergent is blended into gasoline. Therefore, for any single blending operation, several different parties may separately own, lease, operate, control, and/or supervise the blending, and all such parties would be considered blenders under the proposed regulations.

EPA is aware of this situation, and intends that all parties who control or have the power to control the product and/or its additization should be held responsible for compliance with VAR requirements under today's rule. In the other fuel programs administered by EPA, the definitions of various regulated parties are sufficiently broad to include several types of persons or organizations. For example, the definition of "oxygenate blender" (40 CFR 80.2(mm)) could include a branded refiner, independent terminal operator, carrier, or other party. Under these other fuels programs, EPA may hold several parties, all of whom fit within the relevant definition, liable for the same violation, and may collect the full penalty amount from each such party. The reader is referred to the discussion of liability in the reformulated/conventional gasoline rulemaking (59 FR 7777).

In the reformulated/conventional gasoline program, EPA stated that it would not require multiple responsible parties to comply with the same requirement. EPA intends to take a similar approach under this rule, and does not intend to require multiple blenders to fulfill VAR requirements for a single blending operation. However, if VAR requirements are not fulfilled, all parties who qualify as blenders under the definition promulgated today will be presumed liable as discussed above.

EPA expects that parties will enter into contractual agreements with other parties to perform the required VAR calculations and equipment calibrations, and to establish adequate quality assurance programs. As part of raising an affirmative defense, a detergent blender may, where appropriate, establish that it reasonably relied on another party to fulfill the VAR requirements of this rule. Of course, parties have the legal right to establish an indemnification system among themselves if penalties are imposed.

The National Tank Truck Carrier Association ("Truck Carriers") submitted a comment to EPA stating that carriers should not be held liable for detergent blending violations, since they merely loaded the blend components according to the product owner's instructions. EPA is aware that, in many instances, detergent manufacturers and other parties expected to obtain detergent registrations do not actually blend the detergent into the base gasoline. This blending is often performed by distributors, refiners, carriers, and other parties. Thus, many detergent blenders must obtain information from other parties regarding the proper treat rate and any other applicable blending limitations.

However, EPA believes that carriers who blend detergent into gasoline, even if they do so pursuant to manufacturers' instructions, can cause violations, and should therefore be included in the liability scheme under today's rule. As discussed above, EPA lacks the ability to adequately determine the cause of a particular violation, and will thus impose liability on all parties, including carriers who are detergent blenders, who could have caused the violation. Carriers who blend detergent into gasoline can cause such violations in several ways: improper commingling of products, misdelivery, improper identification of products, and failure to obtain or follow instructions provided by manufacturer. Further, to ensure that carriers who blend detergent into gasoline obtain proper blending instructions, detergent blenders must demonstrate possession of adequate written blending instructions as part of an affirmative defense to liability. Such instructions should specify the minimum recommended detergent concentration, as specified in the registration. In addition, the instructions must state whether the detergent is registered for use at that concentration only in leaded gasoline.

Detergent blenders who purchase detergents from other parties may have sufficient influence over the sellers to insist on the receipt of this necessary information as a condition of purchase. However, carriers who are detergent blenders may not have such purchasing or contractual power, but must depend on their clients, the owners of the detergent, to provide adequate blending instructions. Therefore, EPA will require detergent blenders to demonstrate, as part of establishing an affirmative defense to liability, that they either supplied or obtained, depending on their position in the distribution chain, appropriate written additization instructions. The reciprocal nature of this duty satisfies the requirements of *National Tank Truck Carriers* v. *EPA*, 907 F.2d. 177, 185 (D.C.Cir. 1990). In this case, the court refused to allow EPA, in its fuel volatility regulations, to require carriers to obtain documents from shippers as part of establishing the carrier's affirmative defense to liability, unless EPA also imposed a reciprocal requirement on shippers to supply their carriers with such documents.

Of course, if a detergent blender believes that a violation resulted from inaccurate blending instructions supplied to the blender, the blender could demonstrate that as part of establishing an affirmative defense to liability for the violation. As always, EPA will review all the relevant facts and circumstances of a specific enforcement case to determine whether the party had actual culpability in that situation.

The Truck Carriers commented that gasoline carriers should not be held liable as blenders, even if they add detergent to gasoline, since carriers typically follow instructions provided by the owner when blending detergent into gasoline. The Agency agrees that when gasoline carriers blend detergent into gasoline, they typically do so pursuant to the product owners' instructions. However, EPA does not agree that this reliance on the instructions of others means that gasoline carriers cannot be considered detergent blenders. Such carriers, like any other party, will be considered a detergent blender under today's rule if they own, lease, operate, control or supervise the blending operation of a detergent blending facility, including a truck (see 40 CFR 80.139(j)).

EPA expects that gasoline carriers will be considered detergent blenders under today's rule in truck hand-blending situations, as will the shippers who control the product and provide the blending instructions to the carriers. Gasoline carriers may also be considered detergent blenders in automated blending situations,

depending on the degree of control they exercise over the automated detergent blending process. The situation is analogous to the ethanol blending process under the volatility regulations. In many instances in the volatility program, gasoline carriers have been considered ethanol blenders, especially in hand blending situations.

c. *Liability for Inadvertent Violations.* Western Independent Refiners commented that only the knowing sale or transfer of noncompliant product should be the basis of liability under this rule. EPA disagrees. Knowledge of non-compliance has never been the prerequisite for liability in any of the EPA fuels programs. Since many detergent program violations could, and probably will, be caused by negligence or error, it would be counter-productive for the Agency to tolerate mis-additization merely because it is inadvertent. For the Agency to do otherwise would discourage parties from instituting the quality control procedures necessary to ensure compliance.

Furthermore, if parties unknowingly sell or transfer non-conforming product that is later found to be in violation, they will not be treated unfairly under the detergent rule. First, as mentioned above, if the violation is a VAR violation that is discovered through an audit of VAR calculations, only detergent blenders are presumed liable in this interim period. Even if the violation is a detergent program violation not discovered through the VAR calculations, parties will always have the right to establish that they did not cause the violation, as part of an affirmative defense to liability.

The Western Refiners further commented that liability should not attach if parties contracted to avoid liability. EPA's response is that the Agency is not bound, and should not be bound, by contracts between private parties that seek to avoid the imposition of liability imposed by regulations. However, parties may legally decide between themselves about private indemnification if liability is imposed. Parties may also contract between themselves as to the fulfillment of regulatory responsibilities. If these responsibilities are not actually fulfilled, however, each party subject to them faces liability if a violation is found.

The Western Refiners also argued that a party should not be subject to liability for violations in situations where the party relied on misrepresentations of another. EPA again disagrees. If a party believes a detergent program violation was caused because the party relied on improper blending instructions or other misrepresentations of another, the potential respondent can assert this fact as evidence of lack of causation of the violation, as part of its affirmative defense. EPA will review all such relevant information in determining if the respondent has established its affirmative defense.

d. *Detergent Manufacturer Liability: Legal Authority.* EPA proposed to include manufacturers of detergent additives within the presumptive liability scheme of this rule. In the NPRM, EPA claimed authority to regulate detergent manufacturers under CAA sections 211(l) and 211(c)(1), as well as under section 301(a). CMA strongly objected to EPA's proposed imposition of liability on detergent manufacturers, and claimed that EPA did not have the authority to regulate detergent manufacturers under the Act.

EPA disagrees. First, section 211(l) directs EPA to promulgate regulations "establishing specifications" for detergent additives. In today's rule, the Agency is exercising its authority to set specifications by insisting that detergents be properly registered under Part 79, and that registrants provide upon EPA request information required to substantiate the registration information (such as test procedures for identifying the claimed components of the registered product).

To establish effective detergent specifications, it is reasonable to include the manufacturer of the product that must meet the required specifications within the scope of the regulatory scheme. The manufacturer is in the best position to determine whether the product meets the regulatory specifications. Therefore, EPA believes that Congress did not intend to prohibit EPA from regulating the very party who has primary control over determining whether the regulatory specifications are met. This is especially true since detergent manufacturers typically claim that the chemical identity of a detergent package is confidential business information. The detergent manufacturer, therefore, may be the only non-governmental party with the ability to determine whether its product conforms to the applicable specifications.

Section 301(a) of the Act provides EPA with additional authority to regulate detergent manufacturers, by providing EPA with the general authority to promulgate such regulations "as are necessary to carry out" the Agency's functions under the Act. EPA believes that it is necessary to regulate detergent manufacturers in order to effectively implement the requirements of section 211(l). As explained above, detergent manufacturers are in the best position to ensure that their product meets the specifications that EPA is required to promulgate under section 211(l). Therefore, it is necessary for EPA to impose certain obligations on detergent manufacturers in this rule. Although manufacturers do have a business incentive to respond to their customers' desire to use detergent that complies with EPA requirements, EPA does not believe such a market incentive is sufficient to ensure that the product meets the applicable requirements. Of course, liability will attach only where problems arise.

Further, to effectively regulate detergents, it is necessary to regulate all parties in the chain of distribution of detergents and detergent-additized gasoline who could cause violations of this rule, especially since, in some cases, EPA may not be in a good position to determine the cause of a particular violation. EPA believes that it is possible for detergent manufacturers to cause violations of today's rule. For example, if detergents are manufactured incorrectly, they may not provide the expected degree of deposit control. In addition, detergent manufacturers may improperly label the product, or may fail to provide adequate instructions. Finally, downstream parties rely on the manufacturer to properly produce and identify a detergent additive.

In addition, EPA believes it has authority to regulate detergent manufacturers under section 211(c)(1) of the Act. This provision states that EPA may, under certain circumstances, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of a fuel additive. CMA concedes in its comments that section 211(c)(1) provides EPA with the authority to regulate gasoline for the purpose of reducing harmful emissions from gasoline, and to require that gasoline contain detergent additives that would help control such emissions. However, CMA states that section 211(c)(1) does not provide EPA with authority to regulate manufacturers of detergents, since this regulation is not directed at controlling harmful emissions from *detergents.*

EPA disagrees that its authority under section 211(c) is limited to regulating only marketers and producers of gasoline. Section 211(c)(1) grants to EPA the authority to "control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive * * * if in the judgment of the Administrator any emission product of such fuel or fuel

additive causes or contributes to air pollution which may reasonably be anticipated to endanger the public health or welfare." The requirement that gasoline contain detergent additives is intended to reduce harmful emissions from gasoline, and is therefore a "control" on the manufacture and sale of gasoline within the meaning of the term as used in section 211(c)(1).

In *Amoco I*, supra, the D.C. Circuit upheld EPA's promulgation of an affirmative unleaded gasoline marketing requirement as a proper exercise of section 211(c)(1) authority. Under EPA's unleaded gasoline regulations, retailers were required to sell at least one grade of unleaded gasoline at their retail outlets. The court stated that this requirement was a "control" on the sale of leaded gasoline (which impairs the emission control system), since it effectively prevented retailers from selling leaded gasoline unless they also offered for sale at least one grade of unleaded gasoline. In addition, EPA had the authority to impose such a requirement to assure the availability of unleaded gasoline.

Similarly, under today's rule, EPA is promulgating a control on the manufacture and sale of *gasoline* by requiring all gasoline to contain detergent additives at a concentration designed to control the formation of deposits which could cause increased emissions. In addition, this regulation is designed to ensure that properly additized gasoline, which will result in reduced emissions of harmful pollutants compared to unadditized or improperly additized gasoline, will be available for consumer use. For the same reasons, EPA believes it also has authority to regulate distributors of detergent, under sections 211(l), 211(c), and 301(a).

Finally, sections 114 provides EPA with authority to require detergent manufacturers to register detergent additives, and to submit certain information upon EPA request. Section 114 grants EPA broad authority to require the submittal of any information from any person subject to the requirements of the Act for the purpose of enforcing those requirements. This provision further supports EPA's authority to require detergent manufacturers to submit supporting data in order to receive detergent registration, and to submit test data as part of establishing an affirmative defense to liability. To ensure that gasoline is properly additized with detergent, it is necessary for EPA to have information supporting the manufacturer's recommended detergent concentration.

API submitted a comment about the information which upstream parties should be required to provide to establish their affirmative defenses for downstream misadditization violations. API argued that upstream parties should only be required to establish that they transferred the product with a product transfer document accurately identifying it as base gasoline that should not be sold to the ultimate consumer.

EPA agrees that compliance with product transfer document requirements is an important element of an affirmative defense to liability for downstream violations. However, EPA does not agree that such compliance should by itself be sufficient to establish an affirmative defense. As discussed above, upstream parties may cause downstream violations in a variety of ways, and all such causes cannot be detected through the product transfer document. Therefore, EPA is including as a required element of an affirmative defense for most downstream parties a demonstration that the party did not cause the violation.

In the case of detergent manufacturers, an affirmative defense will be established if the manufacturer demonstrates the following: (1) Product transfer document requirements were met; (2) testing of the detergent when it left the manufacturers control showed compliance with applicable requirements; and (3) the manufacturer provided proper blending instructions to its customer. EPA does not believe that a manufacturer who demonstrates these elements could have caused a downstream violation.

e. *Sale of Unregistered Detergent.* CMA expressed concern that the proposed prohibition against selling or offering to sell or supply detergent that does not conform to Part 79 registration specifications would prevent detergent manufacturers from selling to prospective customers detergents that have not yet been developed and registered. EPA does not intend to prohibit detergent manufacturers from having sales discussions with prospective customers about possible future sales of detergents yet to be developed. Such sales discussions are too far in time from the offering for sale of actual detergent for actual use, to be considered covered by the prohibition in today's rule against offering for sale a non-conforming product. Once the product is in the actual development stage, it may qualify for an exemption from the requirements of this rule under the research and development exemption discussed above.

f. *Legal Authority to Regulate Carriers.* The National Tank Truck Carriers ("Truck Carriers") commented that EPA lacked the statutory authority to regulate detergent carriers under CAA sections 211(l) and 301(a). EPA disagrees with these comments. EPA believes that it has sufficient authority under the Clean Air Act to regulate carriers of detergent additives.

First, section 211(l) requires EPA to promulgate regulations "establishing specifications" for detergents. In addition, as stated above, section 301(a) grants EPA the authority to promulgate regulations that are necessary to carry out its functions under the Act. As stated above, EPA often lacks the ability to accurately determine the actual cause of a detergent program violation. Therefore, to ensure that gasoline sold to the ultimate consumer is properly additized, EPA is establishing a scheme of liability under which all parties in the distribution chain who could cause a violation are presumed liable for that violation. Detergent carriers are an essential component of the chain of distribution of detergent additives, and exercise sufficient control over a portion of that distribution chain such that it is necessary for EPA to regulate detergent carriers in order to ensure that detergent additives comply with the regulations promulgated today.

Detergent carriers have the ability to cause violations of this rule. For example, carriers may improperly commingle detergents, or may fail to provide accurate identification of the detergent to the receiving party. EPA is therefore concerned that, without regulation of detergent carriers, neither the requirements of this rule nor the mandate of Congress in Section 211(l) will be effectively implemented, because of the potential for carriers to cause violations, the need to impose a duty on carriers to exercise care in transporting or storing detergent and gasoline, and the need for EPA to determine the cause of violations of today's rule.

The Truck Carriers also commented that EPA does not have the authority to regulate common carriers under section 211(c), since they do not manufacture, introduce into commerce, offer for sale, or sell fuels or fuel additives. EPA disagrees with this argument, and believes that carriers clearly participate in the introduction of fuels and/or fuel additives into commerce. The term "introduce into commerce" is not defined by Congress in the Act. The common definition of the term is sufficiently broad to include carriers of gasoline. The Webster's New Universal Unabridged Dictionary, 1983 edition,

defines "to introduce" as "to take or bring into a given place or position." EPA believes that it is reasonable to include common carriers' transporting activities within this definition.

Furthermore, EPA's ability to regulate carriers pursuant to the authority of section 211(c) has long been recognized by the Agency and industry in other fuels enforcement programs, such as the lead contamination and volatility programs. Under these programs, EPA regulates all parties in the gasoline distribution system, including carriers, pursuant to section 211(c). The Agency's authority, pursuant to section 211(c), to regulate gasoline carriers under today's program is consistent with its long-held authority under these prior programs. In *National Tank Truck Carriers* v. *EPA*, 907 F.2d. 177 (D.C.Cir. 1990), the court found that EPA's rationale for imposing liability on carriers in the volatility program was sufficiently reasonable to uphold such regulation of carriers. The Agency's rationale in the volatility program was similar to the rationale for imposing liability on carriers in this rule, i.e., that it is necessary to impose some degree of responsibility for compliance on all parties in the chain of distribution of the regulated product.

EPA also disagrees with the Truck Carriers' argument that section 301(a) of the Act does not give the Agency authority to regulate carriers. As previously mentioned in the discussion of detergent manufacturer liability, section 301(a) gives EPA the general authority to prescribe regulations necessary to carry out its statutory functions. It is reasonable to interpret this general authority to include the authority to create a detergent program liability scheme covering all parties, including carriers, within the gasoline and detergent distribution systems. The creation of this comprehensive scheme is necessary to ensure effective enforcement of the detergent program, which is a statutorily mandated function of the Agency.

g. *Interaction with Department of Transportation Safety Regulations.* The Truck Carriers commented that the Department of Transportation is the only federal agency that has authority to regulate the transportation of gasoline, and therefore gasoline carriers, since the Hazardous Metals Transportation Safety Act (HMTSA) designates the Secretary of Transportation as the sole source of all regulations affecting commerce in hazardous materials.

EPA does not agree with this argument. It is true that gasoline is a hazardous substance, and is therefore subject to the safety regulations and other requirements of the HMTSA. However, the fact that the Department of Transportation has the authority to promulgate safety regulations governing the transportation of gasoline does not deprive EPA of the authority to regulate the sale and transfer of gasoline to implement the goals of the Clean Air Act. The regulation promulgated today is not intended to regulate any aspect of transportation safety, and therefore does not implicate the HMTSA.

h. *Definition of "Marketer" under Section 211(l).* The Truck Carriers also stated that common carriers were not subject to the prohibitions of section 211(l) because they were not "marketers" of gasoline. EPA disagrees with this argument, and believes that it is reasonable to include carriers in the term "marketers" as used in section 211(l).

The Act does not define "marketers" for purposes of section 211(l). The term generally appears to indicate a broad category of persons involved in the distribution system of a product (see sections 211(h)(4), 211(k)(5), and 211(m)(2)). As used in these provisions, the scope of the term "marketers" may be broader or narrower, depending on the detail with which Congress specified the parties covered by each provision. For example, the long list of parties referenced in section 211(h)(4) makes it clear that "marketer" as used in that provision means an undefined category of persons other than distributors, blenders, resellers, carriers, retailers, or wholesale purchaser-consumers. However, in sections 211(l) and 211(m)(2), the term includes an undefined category of parties other than refiners.

The generally accepted meaning of the term marketer is "one that deals in the market." (Webster's Ninth *New Collegiate Dictionary* 1990.) A carrier would reasonably fall within this definition. Given the lack of a clear definition in the Act for this vague term, the indications that Congress intended the term as used in section 211(l) to have a broad meaning, and the reasons provided above supporting EPA's inclusion of carriers as regulated parties in today's rule, EPA has reasonably determined that carriers are included in the term "marketer" for purposes of section 211(l).

i. *Special Situation of Carriers.* The Truck Carriers commented that, even if EPA has the authority to regulate gasoline carriers, under the Act, the Agency should not exercise that authority because of the special nature of carrier services. The Truck Carriers claimed that gasoline carriers merely follow the owner's instructions when they transport products, and should therefore not be held liable for such products that are in violation of this rule.

EPA disagrees with this argument. EPA has established similar liability schemes in the other fuel programs that the Agency administers, i.e. lead volatility program, lead contamination program, and reformulated/conventional gasoline program. The rationale for the imposition of liability on carriers of gasoline is the same for all these programs, including the rule promulgated today. Although carriers do not take title to the product they transport, they can and do exercise sufficient control of gasoline at some point in the distribution chain, and can therefore cause violations.

It is EPA's experience in the lead contamination and volatility programs that carriers have the ability to improperly commingle, label, or deliver products. These actions could result in violations of the requirements of this rule. Therefore, EPA believes that it is appropriate to include gasoline carriers within the liability scheme promulgated today.

j. *Liability of Common Carriers.* The Truck Carriers expressed concern that the proposed liability scheme placed common carriers at a competitive disadvantage compared to private carriers, because the private carrier would not bear the same risk of penalties and costs of defenses against presumptive liability for violations found in a truck. The Truck Carriers stated that EPA has no rational basis for treating common carriers in a different manner than private carriers.

EPA recognizes the Truck Carriers' concern, but does not agree that the liability scheme in today's rule treats common carriers differently from private carriers. If a refiner chooses to transport its own product, rather than hiring a common carrier, the refiner will be subject to liability for violations found in its transport vehicle. In addition, if the transport vehicle is a branded facility, the refiner will be subject to vicarious liability for violations found at that facility.

Further, carriers will not be presumed liable under today's rule for violations found downstream from their facilities. Carriers will only be held liable for such violations if EPA can demonstrate that they caused the violation. Regarding violations at their own facilities, carriers will be held liable in the same manner that any party is held liable for a violation found at its own facility, and can establish a defense to such liability by showing that they did not cause the violation, and that it complied with

product transfer document requirements. Therefore, EPA believes that the liability scheme promulgated today treats common carriers equitably.

k. *Liability Related to Insufficient Supporting Data or Test Procedures.* Today's rule requires that a detergent manufacturer who registers a detergent under part 79 must make available to EPA, upon EPA's request, supporting data which adequately establishes the effectiveness of the detergent at the minimum recommended concentration specified under the part 79 registration. A workable test procedure, including test results where necessary, to identify the detergent in its pure state is also required upon request.

If the Agency requests such supporting data and/or identification test procedure and results, and the information is not available or is determined by the Agency to be inadequate, the detergent will no longer meet the requirements of this rule, and can no longer be used in gasoline to be sold to the ultimate consumer. Detergent blenders (fuel manufacturers) who continue to use an unacceptable detergent after EPA or the detergent registrant has notified them that the detergent has been disqualified for use in compliance with this rule will be liable for violations resulting from the improper additization. The detergent blenders will be given a 45-day grace period from the date of notification to switch to an eligible detergent product.

However, if the Agency determines that the detergent manufacturer was guilty of fraud or other serious transgression in registering the detergent, then the detergent registration will be considered void *ab initio* as a means of complying with the detergent program requirements of this rule, starting from the time of the detergent's use under the interim detergent program. The detergent manufacturer would thus be liable for the improper use of the detergent from the date it was first used under this program. Fuel marketers who used the detergent will also be liable for such prior use if they cannot establish that they did not cause the violation by having culpability in the improper use, such as by failing to ask to review the detergent manufacturer's supporting data, or by other culpable behavior.

l. *Vicarious Liability.* Today's rule provides for imposition of vicarious liability on branded refiners when violations are discovered at facilities operating under the refiner's name or that of a marketing subsidiary. The vicarious liability concept has been used in many other EPA fuels programs, such as the volatility, lead contamination, and reformulated/conventional gasoline programs. The reason for imposing vicarious liability in today's rule is the same as it is under the other programs.

Vicarious liability in the EPA fuels programs is predicated upon the control the branded refiner has over its branded outlets and other facilities operating under the brand name or the name of a marketing subsidiary. Branded refiners have great contractual and practical ability to control such facilities. This control includes the ability to dictate and determine the attributes and quality of product being stored, transferred or sold in these facilities.

This control is especially apparent in the case of detergent additization, where branded refiners typically advertise their gasoline based on the alleged efficiency or supremacy of their additive packages. The additive package may actually be the only major distinguishing factor between different branded gasolines, which may be substantially fungible in other respects. Branded refiners, accordingly, go to great lengths to ensure that their additive packages are properly blended into their gasoline, even to the point of maintaining their own additive systems in facilities operated by other parties, such as by exchange agreement refiners.

EPA, therefore, does not agree with the comments of API and Amoco Oil Company that vicarious liability on branded refiners should not be imposed. As previously mentioned, branded refiner control over branded facilities is just as significant, or even more significant, in regard to detergent quality than it is in the other EPA programs where vicarious liability has been successfully imposed. In addition, the detergent program's presumptive and vicarious liability scheme is consistent with prior judicial decisions. See *Amoco Oil Co.* v. *Environmental Protection Agency*, 501 F.2d 722 (D.C. Cir. 1974) ("Amoco I"); *Amoco Oil Co.* v. *Environmental Protection Agency*, 501 F.2d 270 (D.C. Cir. 1976) ("Amoco II") and *National Tank Truck Carriers, Inc.* v. *U.S. E.P.A.*, 907 F.2d 177 (D.C. Cir. 1990).

There are several significant aspects of branded refiner vicarious liability under today's rule. First, vicarious liability will not attach to a branded refiner for VAR or other violations found at a terminal operating under that refiner's name, where the violation involves an exchange agreement refiner's designated product. In these circumstances, although the terminal refiner's brand name is on the overall facility, it is not on the other refiner's product in violation, and the branded terminal refiner does not have sufficient control of such product to impose vicarious liability here. However, the terminal branded refiner may, in appropriate circumstances, be considered an actual detergent blender if the facts warrant such a conclusion and the terminal refiner fits within the detergent blender definition. Also, the exchange agreement branded refiner has potential vicarious liability for VAR violations that occur which involve its branded product in additization equipment that is used solely for that branded product.

Another important clarification of branded refiner vicarious liability involves the imposition of such liability for detergent program violations after the additization process. As previously mentioned, only detergent blenders have presumptive liability for VAR violations. However, downstream parties are presumptively liable for gasoline nonconformity violations, such as those involving the sale of inadequately additized product or unleaded product improperly additized only with a carburetor detergent.

If such violations are found at branded downstream facilities, then the branded refiner would be subject to vicarious liability for those violations. As is always the case under the provisions of this rule and EPA's other fuels programs, the branded refiner would have the right to assert its affirmative defense to the imposition of such liability. Similarly, the retailer would also have the right to assert its affirmative defense, including lack of causation, to the imposition of liability for the violation. Both the branded refiner and the retailer would, additionally, have the right to raise the argument, when appropriate in under-additized gasoline situations, that VAR procedures for the gasoline were followed and that no averaging violation of the VAR standard actually occurred.

Another important point about branded refiner vicarious liability involves downstream product transfer document violations. Such violations will not be the basis for any vicarious or presumptive liability, since proper care of these documents is a matter under the sole control of the violating party itself. This approach is consistent with the approach to these violations found in the reformulated/conventional gasoline program, where no presumptive or vicarious liability attaches to these violations.

API and Amoco Oil Company raised an additional concern about vicarious liability under the proposed rule. These commenters urged that the vicarious liability affirmative defense

requirements should not include the need to establish that the violations were caused, or must have been caused, by other parties. This requirement, according to these commenters, creates an unfair burden to refiners.

EPA disagrees. The *Amoco II* case, supra, upheld EPA's right to require branded refiners to establish, as part of an affirmative defense to vicarious liability, that a lead contamination violation was not caused by the refiner, and was instead either caused by an unforeseeable act of vandalism of another, or by an unpreventable breach of contract by another. The language to which these commenters object is the same vicarious liability affirmative defense language which was crafted by the Court and which commenter Amoco and other branded refiners consented to, in the *Amoco II* decision. See *Amoco II*, supra, note 8, p.273.

As previously mentioned, EPA does not believe that a branded refiner has any less control over its branded facilities in the context of the detergent rule than in the context of EPA's other fuels programs. Today's rule, therefore, contains this judicially sanctioned affirmative defense requirement language, as proposed in the NPRM.

One clarification of the proposed vicarious liability affirmative defense requirements is contained in this detergent rule. The NPRM mentioned that the proposed vicarious liability affirmative defense requirements were similar to those found in the volatility program. The volatility program liability provision, 40 CFR 80.28(g)(4), requires that branded refiners establish as part of their affirmative defenses, *inter alia*, that the violation was either caused by an act in violation of law, vandalism or sabotage, or by an unavoidable breach of contract. Intentional commingling is not considered to be an act in violation of law, or of vandalism or sabotage, under the volatility rule, but is instead covered by the provision requiring the branded refiner to establish existence of an effective contractual oversight program to prevent the violation. To be consistent with the volatility and with the reformulated/conventional gasoline rules, this final rule (at 40 CFR 156(c)(2)(ii)) also places acts of intentional commingling in the defense section requiring branded refiner establishment of contractual oversight programs.

m. *Affirmative Defenses to Liability.* The Western Independent Refiners Association ("Western Refiners") commented that the affirmative defense provisions, as proposed by EPA, would be simpler to understand if EPA adopted a quality assurance program requirement as a condition of detergent certification. In this rule, EPA is not promulgating a certification program for detergent additives; however, EPA at this time does not believe that a quality assurance requirement should be required as a condition of receiving certification, but that it should remain a required element of an affirmative defense to liability for certain violations of this rule. Agency experience with similar affirmative defense requirements in other fuels programs indicates that industry is able to understand and work with this concept. In fact, the threat of potential liability if adequate quality assurance programs are not established has proven to be a powerful incentive ensuring the continued existence of such programs. Further, regulated parties are free to choose not to meet the required elements of an affirmative defense, and will not be subject to liability because of that choice as long as no violations occur.

(1) Detergent Manufacturers. EPA proposed that conformity of a detergent with applicable requirements be determined at the time the product was transported from the manufacturer's facility. CMA suggested in its comments on the proposed rule that EPA change the point at which detergent manufacturers must demonstrate through test results, as part of establishing an affirmative defense, that their product conformed with applicable requirements. CMA noted that the detergent product leaves the control of the manufacturer at the point of loading for transport, rather than at the time of actual transport. EPA agrees with the logic and fairness of CMA's argument, and is therefore requiring in this final rule that, for the purposes of a manufacturer's affirmative defense to liability, conformity will be determined at the time the detergent was loaded for transport or otherwise left the manufacturer's control.

(2) Detergent and Gasoline Carriers. The Truck Carriers also expressed concern that carriers will find it difficult to demonstrate, as part of an affirmative defense, that they did not cause a violation, because carriers do not have sufficient power in the gasoline distribution chain to elicit other parties' cooperation in demonstrating lack of causation.

EPA recognizes the Truck Carriers concern, but does not believe that it is valid. It is EPA's experience that, in the other fuel programs implemented by the Agency, all involved parties typically cooperate with EPA to discover who caused the violation. Under this rule, carriers have the burden of demonstrating lack of causation as an element of an affirmative defense only if they are held liable for violations discovered at their own facilities. Carriers should have sufficient control over information regarding activities at facilities that they own or control. For all other violations, carriers will only be held liable where EPA can satisfactorily demonstrate that they caused the violation.

The Truck Carriers also commented that the possession of proper product transfer documents should be the only element required to establish an affirmative defense to carrier liability. EPA disagrees, and does not believe that such an approach would ensure successful implementation of today's rule. Carriers can cause violations in a number of ways that would not necessarily be reflected on or related to the product transfer document, such as improper commingling or blending.

5. California Gasoline

Several California fuel marketers have commented about the detergent program's treatment of gasoline already subject to the CARB detergent program. These commenters argue that the CARB detergent certification program already instituted for California gasoline is as effective as the proposed federal program would be. According to these commenters, California marketers should be exempted from the federal program enforcement requirements since the federal requirements would merely be duplicative of the CARB requirements, unnecessarily burdensome, and not environmentally beneficial.

EPA does not agree with this argument. CARB does have a detergent certification program in place for gasoline sold in California. The federal program does not preempt the California program with respect to certification testing for gasoline sold in California.

CARB bases enforcement of its detergent program on a review of blending records to determine adequate additization. In this respect, the CARB and federal programs are very similar. However, the federal program promulgated today has some additional enforcement requirements that are not found in the CARB program. These additional federal requirements include requiring: detergent accuracy in its unadditized state; transfer documents to accurately identify additive status of product; and quarterly automated equipment calibrations.

The federal enforcement program, therefore, is not identical to CARB's, and can be said to be stricter in some important respects. These differences may result in greater additization

accuracy. EPA does not believe it is appropriate to have a more lenient program in California, in certain important aspects, than in the rest of the country, merely because the gasoline sold in California is also subject to enforcement by another regulatory agency. Consumers of gasoline in California should have the same environmental benefits from the federal rule promulgated today as consumers in other states will acquire.

Furthermore, fulfilling the federal enforcement requirements should assist California marketers in meeting CARB's additization mandates. The federal program requirements are, thus, neither duplicative nor unduly burdensome.

6. Exemptions

Many parties commented about the need to simplify the research waiver provisions of the detergent rule. Commenters advised that detergent research is ongoing, with new products being continuously developed. The research waiver process proposed in the detergent rule NPRM would disrupt industry's ability to develop new detergents in a timely manner, according to these commenters.

EPA agrees that a less cumbersome research control process than the one proposed in the detergent NPRM would be appropriate and would still be effective. Therefore, the interim detergent program takes a much more streamlined approach. All detergent and detergent-additized gasoline being used for research, development, or testing (including certification testing) purposes only, will be exempt from the provisions of the rule, provided certain requirements are met. To be exempt, the fuel will have to be properly identified by documentation, cannot be sold from retail outlets or from non-research wholesale purchaser consumer facilities, and will have to be covered by an annual research notification to EPA.

Racing fuel and aviation fuel will also be exempted from the detergent program requirements. The exemption requirements are similar to those promulgated for research fuels, except that manufacturers will not be required to annually notify EPA of the production of such fuel in order to obtain an exemption. EPA does not believe such an annual notification requirement is necessary or beneficial. However, only racing fuel sold from racing facilities will be exempt from the requirements of today's rule. Fuel will not be exempt if it is sold from retail outlets or for use in motor or nonroad vehicles. The rationale for this requirement is to ensure that such fuel is not available for sale to the general public, since the basis for the exemption is that racing fuel is not being sold or transferred to the public. Aviation and racing fuel must also be covered by documentation establishing such fuels as the specified exempt fuel.

7. Penalties

In the NPRM, it was proposed that there would be a presumption of the number of days of VAR violation, based on the number of days that the product in violation was in the gasoline distribution system. The Western Independent Refiners Association objected to the idea that there should be a presumed number of days for violations of the VAR standard.

The Agency agrees that such a presumption is inappropriate in regard to the detergent rule's VAR violations, since violations of the VAR standard are averaged violations. Section 211(d)(1) specifies that violations of section 211(l) standards based upon multi-day averaging periods shall constitute a day of violation for every day of the averaging period. Consequently, the rule promulgated today complies with this statutory requirement and deletes the number of days presumption proposed in the NPRM.

V. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether a regulation is "significant" and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action". EPA's regulatory impact analysis (RIA), available in the docket and summarized below, indicates that the annual costs to producers for compliance with the requirements of the interim program are not expected to exceed $100 million. However, the analysis demonstrates that the annual costs to producers for compliance with the expected full certification program (to be finalized in a later rulemaking) would be expected to exceed $100 million. Therefore, EPA has treated this action as significant, and has submitted a regulatory analysis to OMB for review.

The total cost of the detergent additive interim registration program to the gasoline industry is estimated at about $130 million over an 18-month period, nearly all of which is associated with the cost of incremental detergents added to gasoline. Annual costs from the start of the interim program (January 1, 1995) through the fourth full year of the expected certification program (i.e., the year 2000), discounted at a rate of 7 percent, amount to a net present value in 1995 of about $650 million. Full certification program costs include costs associated with certification testing and additional registration and recordkeeping requirements, as well as additization costs. Still, over 90 percent of the total estimated cost of the program is associated with the price of the additives needed to bring all gasoline up to the effective detergency levels which much of U.S. gasoline already contains. This cost is generally expected to be passed along to the consumer, increasing the average price of gasoline by about .10 to .25 cents per gallon. This would amount to only a dollar or two per motorist per year, and would be more than compensated by the increased fuel economy and decreased maintenance requirements which improved deposit control would be expected to provide.

The gasoline detergent additive requirements are expected to result in reductions in motor vehicle emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen, totalling about 700,000 tons during the 18-month interim program, and about 600,000 tons per year thereafter. These emission reductions will be achieved at relatively low cost, i.e., about $220 per ton. Fuel economy benefits are also expected as a result of the detergent program, amounting to over 390 million gallons during the 1995–2000 period The savings associated with this fuel economy benefit are expected to partially offset the costs of the program, decreasing the cost per ton of emission reduction to about $120.

The program is not expected to be a significant cost burden to individual businesses. As described above, incremental costs for detergent additive are expected to be passed on to the consumer. Furthermore, adverse effects on competitive relationships are not expected. In fact, this rule should result in increased sales and business opportunities within the fuel additive industry. Any written comments from OMB and any EPA response to OMB's comments are available in the public docket for this rule.

B. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, federal agencies are required to assess the economic impact of federal regulations on small entities. Accordingly, a Regulatory Flexibility Analysis (RFA) has been prepared. The RFA is included as Chapter 5 in the Regulatory Impact Analysis described in the previous section of this notice, and is available for review in the public docket.

The RFA shows that the regulatory responsibilities of the various types of businesses affected by this rule, along the chain from gasoline refiner to distributor to retailer, differ markedly. For each type of business, however, even for the small business entities in this chain, the costs of the regulation are estimated to be modest. The largest costs would be incurred by gasoline producers in the price of the additional detergent additive required to be added to gasoline. As described above, this cost is expected to be passed along the distribution chain to consumers. In any case, if small businesses were permitted a special provision allowing under-additization, this would minimize realization of the program's projected air quality benefits. EPA has thus concluded that significant adverse economic impacts on small businesses are extremely unlikely. On the contrary, in the case of small additive manufacturers and additive injection equipment manufacturers, this interim registration regulation and the expected certification rulemaking could result in significant economic opportunities through increased sales.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the requirements of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1655.02) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M Street, SW., (Mail Code 2136); Washington, DC 20460, or by calling (202) 260–2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

This collection of information has an estimated reporting burden averaging 6.3 hours per response and an estimated annual recordkeeping burden averaging less than one hour per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch; EPA; 401 M Street, SW., (Mail Code 2136); Washington, DC 20460, and to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC, 20503; marked "Attention: Desk Officer for EPA."

VI. Electronic Copies of Rulemaking Documents

Electronic copies of the preamble, the Regulatory Impact Analysis, and the regulatory text of this final rule are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). Instructions for accessing TTNBBS and downloading the relevant files are described below.

TTNBBS can be accessed using a dial-in telephone line (919–541–5742) and a 1200, 2400, or 9600 bps modem (equipment up to 14.4 Kbps can be accommodated). The parity of the modem should be set to N or none, the data bits to 8, and the stop bits to 1. When first signing on to the bulletin board, the user will be required to answer some basic informational questions to register into the system. After registering, proceed through the following options from a series of menus:

(T) Gateway to TTN Technical Areas (Bulletin Boards)
(M) OMS
(K) Rulemaking and Reporting

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. The following four "aip" files are currently available:

DCA__PRE.ZIP (Preamble from the Notice of Proposed Rulemaking)
DCA__1FP.ZIP (Preamble to the final rule on the Interim Requirements for Deposit Control Additives)
DCA__IFR.ZIP (Regulatory text for the final rule on the Interim Requirements for Deposit Control Additives)
DCA__RIA.ZIP (Regulatory Impact Analysis)

File information can be obtained from the "READ.ME" file. Choose from the following options when prompted:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, <H>elp or <ENTER> to exit.

To download a file, e.g., <D> filename.ZIP, the user needs to choose a file transfer protocol appropriate for the user's computer from the options listed on the terminal. The user's computer is then ready to receive the file by invoking the user's resident file transfer software. Programs and instructions for de-archiving compressed files can be found under <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 EST, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at 919–541–5384 in Research Triangle Park, North Carolina, during normal business hours EST.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline detergent additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: October 14, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. A new subpart G, consisting of §§ 80.140 through 80.169, is added to part 80, to read as follows:

Subpart G—Detergent Gasoline

Sec.

80.140 Definitions.
80.141 Interim detergent gasoline program.

80.142—80.154 [Reserved]
80.155 Controls and prohibitions.
80.156 Liability for violations of the interim detergent program controls and prohibitions.
80.157 Volumetric additive reconciliation ("VAR"), equipment calibration, and recordkeeping requirements.
80.158 Product transfer documents.
80.159 Penalties.
80.160 Exemptions.
80.161—80.169 [Reserved]

Subpart G—Detergent Gasoline

§ 80.140 Definitions.

The definitions in this section apply only to subpart G of this part. Any terms not defined in this subpart shall have the meaning given them in 40 CFR part 80, subpart A, or, if not defined in 40 CFR part 80, subpart A, shall have the meaning given them in 40 CFR part 79, subpart A.

Additization means the addition of detergent to gasoline or post-refinery component in order to create detergent-additized gasoline or detergent-additized post-refinery component.

Automated detergent blending facility means any facility (including, but not limited to, a truck or individual storage tank) at which detergent is blended with gasoline or post-refinery component, by means of an injector system calibrated to automatically deliver a prescribed amount of detergent.

Base gasoline means any gasoline that does not contain detergent.

Carburetor deposits means the deposits formed in the carburetor during operation of a carburetted gasoline engine which can disrupt the ability of the carburetor to maintain the proper air/fuel ratio.

Carrier of detergent means any distributor of detergent who transports or stores or causes the transportation or storage of detergent without taking title to or otherwise having any ownership of the detergent, and without altering either the quality or quantity of the detergent.

Deposit control effectiveness means the ability of a detergent additive package to prevent the formation of deposits in gasoline engines.

Deposit control efficiency means the degree to which a detergent additive package at a given concentration in gasoline is effective in limiting the formation of deposits. The addition of inactive ingredients to a detergent additive package, to the extent that this addition dilutes the concentration of the detergent-active components, reduces the deposit control efficiency of the package.

Detergent additive package means any chemical compound or combination of chemical compounds, including carrier oils, that may be added to gasoline, or to post-refinery component blended with gasoline, in order to control deposit formation. Carrier oil means an oil that may be added to the package to mediate or otherwise enhance the detergent chemical's ability to control deposits. A detergent additive package may contain non-detergent-active components such as corrosion inhibitors, antioxidants, metal deactivators, and handling solvents.

Detergent blender means any person who owns, leases, operates, controls or supervises the blending operation of a detergent blending facility. Pursuant to the definition in 40 CFR 79.2(d), a detergent blender is also considered a fuel manufacturer.

Detergent blending facility means any facility (including, but not limited to, a truck or individual storage tank) at which detergent is blended with gasoline or post-refinery component.

Detergent-active components means the components of a detergent additive package which act to prevent the formation of deposits, including, but not necessarily limited to, the actual detergent chemical and any carrier oil (if present) that acts to enhance the detergent's ability to control deposits.

Detergent-additized gasoline (also called *detergent gasoline*) means any gasoline that contains base gasoline and detergent.

Detergent-additized post-refinery component means any post-refinery component that contains detergent.

Distributor of detergent means any person who transports or stores or causes the transportation or storage of detergent at any point between its manufacture and its introduction into gasoline.

Fuel injector deposits (also known as *port fuel injector deposits* or *PFID*) means the deposits formed on fuel injector(s) during and after operation of a gasoline engine, as evaluated by the reduction in the gasoline flow rate through the fuel injector(s).

Gasoline means any fuel for use in motor vehicles and motor vehicle engines, including both highway and off-highway vehicles and engines, and commonly or commercially known or sold as gasoline. The term "gasoline" is inclusive of base gasoline, detergent gasoline, and base gasoline or detergent gasoline that has been commingled with post-refinery component.

Hand blending detergent facility means any facility (including, but not limited to, a truck or individual storage tank) at which detergent is blended with gasoline or post-refinery component by the manual addition of detergent, or at which detergent is blended with these substances by any means that is not automated.

Intake valve deposits (*IVD*) means the deposits formed on the intake valve(s) during operation of a gasoline engine, as evaluated by weight.

Manufacturer of detergent means any person who owns, leases, operates, controls, or supervises a facility that manufactures detergent. Pursuant to the definition in 40 CFR 79.2(f), a manufacturer of detergent is also considered an additive manufacturer.

Post-refinery component means any gasoline blending stock or any oxygenate which is blended with gasoline subsequent to the gasoline refining process.

§ 80.141 Interim detergent gasoline program.

(a) *Effective date of requirements; responsible parties.* Beginning January 1, 1995, all gasoline sold or transferred to the ultimate consumer, or to the marketer who sells or transfers gasoline to the ultimate consumer, must contain detergent additive(s) meeting the requirements of this section. The applicability of these detergency requirements to specific types of gasoline is specified in paragraph (b) of this section. Pursuant to paragraphs (c) through (f) of this section, compliance with the requirements of this section is the responsibility of parties who directly or indirectly sell or dispense gasoline to the ultimate consumer as well as parties who manufacture, supply, or transfer detergent additives or detergent-additized post-refinery components.

(b) *Applicability of gasoline detergency requirements.* Except as specifically exempted in § 80.160, the detergency requirements of this subpart apply to all gasoline, including highway-use, off-road, reformulated, conventional, and oxygenated gasolines, as well as the gasoline component mixtures of petroleum and alcohol fuels, gasoline used as marine fuel, gasoline service accumulation fuel (as described in § 86.113–94(a)(1) of this chapter), and the gasoline component of fuel mixtures of petroleum and methanol used for service accumulation in flexible fuel vehicles (as described in § 86.113–94(d) of this chapter).

(c) *Detergent registration requirements.* To be eligible for use by fuel manufacturers in complying with the gasoline detergency requirements of this subpart, a detergent additive package must be registered by its manufacturer under 40 CFR part 79 according to the specifications in paragraphs (c) (1) through (3) of this

section. After evaluating the adequacy of registration data provided by the detergent manufacturer pursuant to these requirements, if EPA finds the data to be deficient, EPA may disqualify the detergent package for use in complying with the gasoline detergency requirements of this subpart, under the provisions of paragraph (g) of this section.

(1) *Compositional data.* The compositional data supplied to EPA by the additive manufacturer for purpose of registering a detergent additive package under § 79.21(a) of this chapter must include:

(i) A complete listing of the components of the detergent additive package, using standard chemical nomenclature when possible or providing the chemical structure of any component for which the standard chemical name is not precise. Detergent-active components may not be reported as the product of other chemical reactants.

(ii) The exact weight and/or volume percent (as applicable) of each component of the package, with variability in these amounts restricted according to the provisions of paragraph (c)(2) of this section.

(iii) For each detergent-active component of the package, classification into one of the following designations:

(A) Polyalkyl amine;
(B) Polyether amine;
(C) Polyalkylsuccinimide;
(D) Polyalkylaminophenol;
(E) Detergent-active carrier oil; and
(F) Other detergent-active component.

(2) *Allowable variation in compositional data.* A single detergent additive registration may contain no variation in the identity or concentration of any of the detergent-active components identified pursuant to paragraph (c)(1)(iii) of this section. The identity and/or concentration of other components of the detergent additive package may vary under a single registration, provided that the range of such variation is specified in the registration and that such variability does not change the minimum recommended concentration of the additive package reported in accordance with the requirements of paragraph (c)(3) of this section. Detergent additive packages which constitute a variation from these restrictions must be separately registered. EPA may disqualify an additive for use in satisfying the requirements of this subpart if EPA determines that the variability included within a given detergent additive registration affects the concentration of detergent-active components.

(3) *Minimum recommended concentration.* (i) The lower boundary of the recommended range of concentration for the detergent additive package in gasoline, reported by the additive manufacturer pursuant to the registration requirements in § 79.21(d) of this chapter, must equal or exceed the minimum concentration which the manufacturer has determined to be necessary for the control of deposits in the associated fuel type. This concentration must be reported in gallons of the detergent additive package per gallons of gasoline.

(A) When registered for use in unleaded gasoline, the minimum recommended concentration must not be less than the concentration necessary for the control of PFID and IVD.

(B) When registered for use in leaded gasoline, the minimum recommended concentration must not be less than the concentration necessary for the control of carburetor deposits.

(ii) The minimum concentration reported in the detergent registration according to the provisions of paragraph (c)(3)(i) of this section must also be communicated in writing by the additive manufacturer to each fuel manufacturer who purchases the subject detergent for purpose of compliance with the gasoline detergency requirements of this subpart, and to any additive manufacturer who purchases the subject additive with the intent of reselling it to a fuel manufacturer for this purpose.

(iii) Pursuant to the requirements of paragraph (e) of this section, EPA may require the additive manufacturer to submit data to support the deposit control effectiveness of the detergent package at the specified minimum effective concentration. EPA may disqualify an additive for use in satisfying the requirements of this subpart upon finding that the supporting data is inadequate. Manufacturers may be subject to the liabilities and enforcement actions in §§ 80.156 and 80.159 if such a finding is made.

(d) *Detergent gasoline registration requirements.* (1) Pursuant to the fuel registration requirements of § 79.11 of this chapter, a detergent blender/fuel manufacturer must include adequate information in the gasoline's registration to identify which registered detergent additive(s) will be used in the gasoline. This information must at a minimum include the specific commercial identifying name and manufacturer of the detergent additive package(s), the range of concentration of each such additive package intended to be used in the base gasoline, and any additional information needed to clearly identify which registered detergent additive(s) are to be used. A fuel registration shall be deemed insufficient if the registered additive to be used cannot be clearly identified based on the information provided. To comply with the detergency requirements of this subpart, the lower boundary of the range of concentration of the detergent additive package, reported by the fuel manufacturer pursuant to the registration requirements of § 79.11(c) of this chapter, must equal or exceed the minimum recommended concentration specified in the detergent additive's registration, unless otherwise approved by EPA under the provisions of paragraph (d)(2) of this section.

(2) If a detergent blender believes that the minimum treat rate recommended by the manufacturer of a detergent additive exceeds the amount of detergent actually required for effective deposit control, then, upon informing EPA of these circumstances pursuant to paragraph (d)(2)(i) of this section, the detergent blender may use the detergent at a lower concentration than recommended by the detergent manufacturer. Under the provisions of paragraph (d)(2)(ii) of this section, EPA may subsequently require the detergent blender to provide test data substantiating the effectiveness of the detergent at the lower concentration. Pursuant to paragraph (d)(2)(iii) of this section, if EPA determines that the lower concentration does not provide a level of deposit control consistent with the requirements of this section, the detergent blender may be subject to the penalties described in §§ 80.156 and 80.159 for any gasoline additized at the lower concentration.

(i) The detergent blender must inform EPA in writing of an intent to use a detergent product at a lower concentration than the minimum recommended by the detergent manufacturer. This notification must clearly specify the name of the detergent product and its manufacturer, the concentration recommended by the detergent manufacturer, and the concentration which the detergent blender intends to use. The notification must also attest that data are available to substantiate the deposit control effectiveness of the detergent at the intended lower concentration. The notification should be sent by certified mail to the address specified in § 80.160(a).

(ii) At its discretion, EPA may request that the detergent blender submit the test data purported to substantiate the claimed effectiveness of the lower concentration of the detergent additive.

In such instance, EPA shall also require the manufacturer of the subject detergent additive to submit test data substantiating the minimum recommended concentration specified in the detergent additive registration. In each case, the supporting data will be due to EPA within 30 days of receipt of EPA's request.

(A) If the detergent blender fails to submit the required supporting data to EPA in the allotted time period, EPA will proceed on the assumption that data are not available to substantiate the effectiveness of the lower detergent concentration, and the detergent blender will be subject to any applicable liabilities and penalties in §§ 80.156 and 80.159 for any gasoline it has additized at the lower concentration.

(B) If the detergent manufacturer fails to submit the required test data to EPA within the allotted time period, EPA will proceed on the assumption that data are not available to substantiate the minimum recommended concentration specified in the detergent registration, and the subject additive may be disqualified for use in complying with the requirements of this subpart, pursuant to the procedures in paragraph (g) of this section. The detergent manufacturer may also be subject to applicable liabilities and penalties in §§ 80.156 and 80.159.

(iii) If both parties submit the requested information, EPA will evaluate the quality and results of both sets of test data in relation to each other and to industry-consensus test practices and standards, in a manner consistent with the guidelines described in paragraph (e) of this section. EPA will inform both the detergent blender and the detergent manufacturer of the results of its analysis within 60 days of receipt of both sets of data. Either party may appeal EPA's decision, using procedures analogous to those specified in paragraphs (g)(3) through (g)(4) of this section.

(e) *Demonstration of deposit control efficiency.* At its discretion, EPA may require a detergent additive registrant to provide test data to support the deposit control effectiveness of a detergent at the minimum concentration recommended, pursuant to paragraph (c)(3) of this section and § 79.21(d) of this chapter. The required supporting data must be submitted to EPA within 30 days of receipt of EPA's request. EPA will notify the submitter, within 60 days after receiving the supporting data, whether the data is adequate to support the deposit control efficiency claimed. Subject to the procedures specified in paragraph (g) of this section, if the supporting data are not submitted or if EPA finds the data insufficient, the detergent may be disqualified for use by fuel manufacturers in complying with the requirements of this subpart. EPA will use the following guidelines in determining the adequacy of the supporting data:

(1) *CARB-based supporting test data.* For detergent additives which are certified by the California Air Resources Board (CARB) for use in the State of California (pursuant to Title 13, section 2257 of the California Code of Regulations), the CARB certification data constitutes adequate support of the detergent's effectiveness under this section, with the exception that CARB detergent certification data specific to California Phase II reformulated gasoline (pursuant to Title 13, Chapter 5, Article 1, Subarticle 2, California Code of Regulations, Standards for Gasoline Sold Beginning March 1, 1996) will not be considered adequate support for detergent effectiveness in gasoline sold outside of California. For CARB-based supporting data to be used to demonstrate detergent performance, the concentration of the detergent-active components reported in the subject CARB detergent certification must not exceed the minimum recommended concentration reported in the applicable detergent additive registration.

(2) EPA will evaluate the adequacy of other supporting data according to the following guidelines:

(i) Test fuel guidelines.

(A) The gasoline used in the supporting tests must contain the detergent-active components of the subject detergent additive package in an amount which corresponds to the minimum recommended concentrations recorded in the respective detergent registration, or less than this amount.

(B) The test fuels must not contain any detergent-active components other than those recorded in the subject detergent registration.

(C) The test fuels used must be reasonably typical of in-use fuels in their tendency to form deposits. Test fuel taken directly from commercial refinery production stock is acceptable. Specially refined low-deposit-forming fuels such as indolene are not acceptable. Other specially blended test fuels will be evaluated by EPA for acceptability based on the extent to which such fuels adequately represent the deposit-forming tendency of typical (average) in-use fuels, as reflected in the levels of the following fuel parameters: sulfur content, aromatic content, olefin content, T–90, and oxygenate content.

(D) The composition of the blended test fuel(s) used in carburetor deposit control testing, conducted to support the claimed effectiveness of detergents used in leaded gasoline, should be reasonably typical of in-use gasoline in its tendency to form carburetor deposits (or more severe than typical in-use fuels) as defined by the olefin and sulfur content. Test data using leaded fuels is preferred for this purpose, but data collected using unleaded fuels may also be acceptable provided that some correlation with additive performance in leaded fuels is available.

(ii) Test procedure guidelines.

(A) To be acceptable, test data submitted to support the deposit control effectiveness of a detergent additive must derive from testing conducted in conformity with good engineering practices.

(B) For demonstration of fuel injector and intake valve deposit control performance, vehicle-based tests using standard industry procedures and standards is preferred. Engine-based tests may also be acceptable, assuming a reasonable correlation with vehicle-based tests and standards can be demonstrated. Bench test data may be acceptable to demonstrate fuel injector deposit control performance, assuming the results can be correlated with vehicle- or engine-based tests and standards. Bench testing will not be considered acceptable for demonstration of IVD control performance. Examples of acceptable test procedures are contained in the following references:

(*1*) Intake Valve Deposit Test Procedures:

(*i*) "Intake Valve Deposits—Fuel Detergency Requirements Revisited", Bill Bitting et al., Society of Automotive Engineers, SAE Technical Paper No. 872117, 1987.[1]

(*ii*) "BMW—10,000 Miles Intake Valve Test Procedure", March 1, 1991, Section 2257, Title 13, California Code of Regulations.

(*iii*) "Standard Test Method for Vehicle Evaluation of Unleaded Automotive Spark-Ignition Engine Fuel for Intake Valve Deposit Formation", American Society for Testing and Materials, ASTM Test Method D–5500.[2]

(*iv*) "Effect on Intake Valve Deposits of Ethanol and Additives Common to the Available Ethanol Supply", Clifford Shilbolm et al., SAE Technical Paper Series No. 902109, 1990.

(*2*) Fuel Injector Deposit Test Procedures:

(*i*) "Test Method for Evaluating Port Fuel Injector (PFI) Deposits in Vehicle

[1] Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096–0001.

[2] American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA, 19103–1187.

Engines", March 1, 1991, Section 2257, Title 13, California Code of Regulations.

(*ii*) "A Vehicle Test Technique for Studying Port Fuel Injector Deposits—A Coordinating Research Council Program", Robert Tupa et al., SAE Technical paper No. 890213, 1989.

(*iii*) "The Effects of Fuel Composition and Additives on Multiport Fuel Injector Deposits", Jack Benson et al., SAE Technical Paper Series No. 861533, 1986.

(*iv*) "Injector Deposits—The Tip of Intake System Deposit Problems", Brian Taneguchi, et al., SAE Technical Paper Series No. 861534, 1986.

(C) For demonstration of carburetor deposit control performance, any generally accepted vehicle, engine, or bench test procedure for carburetor deposit control will be considered adequate. Port and throttle body fuel injector deposit control test data will also be considered to be adequate demonstration of an additive's ability to control carburetor deposits. Examples of acceptable test procedures for demonstration of carburetor deposit control, in addition to the fuel injector test procedures listed above in paragraph (e)(2)(ii)(B)(*2*) of this section, are contained in the following references:

(*1*) "Fuel Injector, Intake Valve, and Carburetor Detergency Performance of Gasoline Additives", C.H. Jewitt et al., SAE Technical Paper No. 872114, 1987.

(*2*) "Carburetor Cleanliness Test Procedure, State-of-the-Art Summary, Report: 1973–1981", Coordinating Research Council, CRC Report No. 529.[3]

(f) *Detergent identification test procedure.* (1) At its discretion, EPA may require the additive registrant to submit an analytical procedure capable of identifying the detergent additive in its pure state. The test procedure will be due to EPA within 30 days of the registrant's receipt of the request. Subject to the provisions in paragraph (g) of this section, if the registrant fails to submit an analytical procedure, or if EPA judges a submitted procedure to be inadequate, EPA may deny or withdraw the detergent's eligibility to be used to satisfy the detergency requirements in this section.

(2) The analytical procedure submitted by the registrant must be able to both qualitatively and quantitatively identify each component of the detergent additive package. To be acceptable, the procedure must provide results that conform to reasonable and customary standards of repeatability and reproducibility, and reasonable and customary limits of detection and accuracy, for the type of test in question.

(3) A fourier transform infrared spectroscopy (FTIR)-based procedure, including an actual infrared spectrum of the detergent additive package and each component part of the detergent package obtained from this test method, is preferred.

(g) *Disqualification of a detergent additive package.* (1) When EPA makes a preliminary determination that a detergent additive registrant has failed to comply with the requirements of paragraph (c), (d)(2)(ii)(B), (e), or (f) of this section, either by failing to submit required information for a subject detergent additive or by submitting information which EPA deems inadequate, EPA shall notify the additive registrant by certified mail, return receipt requested, setting forth the basis for that determination and informing the registrant that the detergent may lose its eligibility to be used to comply with the detergency requirements of this section.

(2) If EPA determines that the detergent registration was created by fraud or other misconduct, such as a negligent disregard for the truthfulness or accuracy of the required information or of the application, the detergent registration will be considered void *ab initio* and the revocation of qualification will be retroactive to January 1, 1995 or the date on which the additive product was first registered, whichever is later.

(3) The registrant will be afforded 60 days from the date of receipt of the notice of intent of detergent disqualification to submit written comments concerning the notice, and to demonstrate or achieve compliance with the specific data requirements which provide the basis for the proposed disqualification. If the registrant does not respond in writing within 60 days from the date of receipt of the notice of intent of disqualification, the detergent disqualification shall become final by operation of law and the Administrator shall notify the registrant of such disqualification. If the registrant responds in writing within 60 days from the date of receipt of the notice of intent to disqualify, the Administrator shall review and consider all comments submitted by the registrant before taking final action concerning the proposed disqualification. The registrants' communications should be sent to the following address: Director, Field Operations and Support Division, Mail Code: 6406J, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(4) As part of a written response to a notice of intent to disqualify, a registrant may request an informal hearing concerning the notice. Any such request shall state with specificity the information the registrant wishes to present at such a hearing. If an informal hearing is requested, EPA shall schedule such a hearing within 90 days from the date of receipt of the request. If an informal hearing is held, the subject matter of the hearing shall be confined solely to whether or not the registrant has complied with the specific data requirements which provide the basis for the proposed disqualification. If an informal hearing is held, the designated presiding officer may be any EPA employee, the hearing procedures shall be informal, and the hearing shall not be subject to or governed by 40 CFR part 22 or by 5 U.S.C. 554, 556, or 557. A verbatim transcript of each informal hearing shall be kept and the Administrator shall consider all relevant evidence and arguments presented at the hearing in making a final decision concerning a proposed cancellation.

(5) If a registrant who has received a notice of intent to disqualify submits a timely written response, and the Administrator decides after reviewing the response and the transcript of any informal hearing to disqualify the detergent for use in complying with the requirements of this subpart, the Administrator shall issue a final disqualification order, forward a copy of the disqualification order to the registrant by certified mail, and promptly publish the disqualification order in the **Federal Register**. Any disqualification order issued after receipt of a timely written response by the registrant shall become legally effective five days after it is published in the **Federal Register**.

(6) Upon making a final decision to disqualify a detergent additive package pursuant to this paragraph (g), EPA shall inform all fuel manufacturers and secondary additive manufacturers whose product registrations report the potential use of the disqualified detergent that such detergent is no longer eligible for compliance with the requirements of this subpart. Such fuel manufacturers and secondary additive manufacturers shall have 45 days in which to stop using the ineligible detergent additive package and substitute an eligible detergent additive. When applicable, EPA shall also notify such parties that the detergent registration had been created by fraud or other misconduct, pursuant to paragraph (g)(2) of this section.

[3] Coordinating Research Council Inc. (CRC), 219 perimeter Center Parking, Atlanta, Georgia, 30346.

§ 80.142—80.154 [Reserved]

§ 80.155 Controls and prohibitions.

(a) (1) No person shall sell, offer for sale, dispense, supply, offer for supply, transport, or cause the transportation of gasoline to the ultimate consumer for use in motor vehicles or in any off-road engine use (except as provided in § 80.160), or to a gasoline retailer or wholesale purchaser-consumer, and no person shall additize gasoline, unless such gasoline has been additized in conformity with the requirements of § 80.141.

(2) Gasoline has been additized in conformity with the requirements of § 80.141 when the detergent component satisfies the requirements of § 80.141 and when:

(i) The gasoline has been additized in conformity with the detergent composition and purpose-in-use specifications of an applicable detergent registered under 40 CFR part 79, in accordance with at least the minimum concentration specifications of a detergent registered under 40 CFR part 79 or as otherwise provided under § 80.141(d)(2); or

(ii) The gasoline is composed of two or more commingled gasolines and each component gasoline has been additized in conformity with the detergent composition and purpose-in-use specifications of a detergent registered under 40 CFR part 79, in accordance with at least the minimum concentration specifications of a detergent registered under 40 CFR part 79 or as otherwise provided under § 80.141(d)(2); or

(iii) The gasoline is composed of a gasoline commingled with a post-refinery component, and both of these components have been additized in conformity with the detergent composition and use specifications of a detergent registered under 40 CFR part 79, in accordance with at least the minimum concentration specifications of a detergent registered under 40 CFR part 79 or as otherwise provided under § 80.141(d)(2).

(b) No person shall blend detergent into gasoline or post-refinery component unless such person complies with the volumetric additive reconciliation requirements of § 80.157.

(c) No person shall sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline, detergent, or detergent-additized post-refinery component unless the product transfer document for the gasoline, detergent or detergent-additized post-refinery component complies with the requirements of § 80.158.

(d) No person shall refine, import, manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of any detergent that is to be used as a component of detergent-additized gasoline or detergent-additized post-refinery component unless the detergent conforms with the composition specifications of a detergent registered under 40 CFR part 79, and the detergent otherwise complies with the requirements of § 80.141.

(e) (1) No person shall sell, offer for sale, dispense, supply, offer for supply, transport, or cause the transportation of detergent-additized post-refinery component unless the post-refinery component has been additized in conformity with the interim detergent program requirements of § 80.141.

(2) Post-refinery component has been additized in conformity with the interim detergent program requirements of § 80.141 when the detergent component satisfies the requirements of § 80.141 and:

(i) The post-refinery component has been additized in accordance with the detergent composition and use specifications of a detergent registered under 40 CFR part 79, and in accordance with at least the minimum concentration specifications of a detergent registered under 40 CFR part 79 or as otherwise provided under § 80.141(d)(2); or

(ii) The post-refinery component is composed of two or more commingled post-refinery components, and each component has been additized in accordance with the detergent composition and use specifications of a detergent registered under 49 CFR part 79, and in accordance with at least the minimum concentration specifications of a detergent registered under 40 CFR part 79 or as otherwise provided under § 80.141(d)(2).

§ 80.156 Liability for violations of the interim detergent program controls and prohibitions.

(a) *Persons liable*—(1) *Gasoline non-conformity.* Where gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, or detergent blender, is found in violation of any of the prohibitions specified in § 80.155(a), the following persons shall be deemed in violation:

(i) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, or detergent blender, who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found;

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who refined, imported, manufactured, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent-additized gasoline, the base gasoline component, the detergent component, or the detergent-additized post-refinery component, of the gasoline that is in violation; and

(iii) Each gasoline carrier who dispensed, supplied, stored, or transported any gasoline in the storage tank containing gasoline found to be in violation, and each detergent carrier who dispensed, supplied, stored, or transported the detergent component of any post-refinery component or gasoline in the storage tank containing gasoline found to be in violation, provided that the EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(2) *Post-refinery component non-conformity.* Where detergent-additized post-refinery component contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, is found in violation of the prohibitions specified in § 80.155(e), the following persons shall be violation:

(i) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found;

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent-additized post-refinery component, or the detergent component of the post-refinery component, in violation; and

(iii) Each carrier who dispensed, supplied, stored, or transported any detergent-additized post-refinery component in the storage tank containing post-refinery component in violation, and each detergent carrier who dispensed, supplied, stored, or transported the detergent component of any detergent-additized post-refinery component which is in the storage tank containing detergent-additized post-refinery component found to be in violation, provided that the EPA demonstrates by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(3) *Detergent non-conformity.* Where the detergent (prior to additization) contained in any storage tank or container found at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, is found in violation of the prohibitions specified in § 80.155(d), the following persons shall be in violation:

(i) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found;

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent that is in violation; and

(iii) Each gasoline or detergent carrier who dispensed, supplied, stored, or transported any detergent which is in the storage tank or container containing detergent found to be in violation, providing that EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(4) *Volumetric additive reconciliation.* Where a violation of the volumetric additive reconciliation requirements established by § 80.155(b) has occurred, each detergent blender who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation has occurred, shall be in violation.

(5) *Product transfer document.* Where a violation of § 80.155(c) is found at a facility owned, leased, operated, controlled, or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, the following persons shall be in violation: each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, who owns, leases, operates, control or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found.

(b) *Branded refiner vicarious liability.* Where any violation of the prohibitions specified in § 80.155 has occurred, with the exception of violations of § 80.155(c), a refiner will also be deemed liable for violations occurring at a facility operating under such refiner's corporate, trade, or brand name or that of any of its marketing subsidiaries. For purposes of this section, the word facility includes, but is not limited to, a truck or individual storage tank.

(c) *Defenses.* (1) In any case in which a gasoline refiner, importer, distributor, carrier, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent distributor, carrier, or blender, is in violation of any of the prohibitions of § 80.155, the regulated party shall be deemed not in violation if it can demonstrate:

(i) That the violation was not caused by the regulated party or its employee or agent;

(ii) That product transfer documents account for the gasoline, detergent, or detergent-additized post-refinery component in violation and indicate that the gasoline, detergent, or detergent-additized post-refinery component satisfied relevant requirements when it left their control; and

(iii) That the party has fulfilled the requirements of paragraphs (c) (2) or (3) of this section, as applicable.

(2) *Branded refiner.* (i) Where a branded refiner, pursuant to paragraph (b) of this section, is in violation of any of the prohibitions of § 80.155 as a result of violations occurring at a facility (including, but not limited to, a truck or individual storage tank) which is operating under the corporate, trade or brand name of a refiner or that of any of its marketing subsidiaries, the refiner shall be deemed not in violation if it can demonstrate, in addition to the defense requirements stated in paragraph (c)(1) of this section, that the violation was caused by:

(A) An act in violation of law (other than these regulations), or an act of sabotage or vandalism, whether or not such acts are violations of law in the jurisdiction where the violation of the prohibitions of § 80.155 occurred; or

(B) The action of any gasoline refiner, importer, reseller, distributor, oxygenate blender, detergent manufacturer, distributor, blender, or retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite the implementation of an oversight program, including, but not limited to, periodic review of product transfer documents by the refiner to ensure compliance with such contractual obligation; or

(C) The action of any gasoline or detergent carrier, or other gasoline or detergent distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, post-refinery component, or detergent, to a gasoline or detergent distributor, oxygenate blender, detergent blender, gasoline retailer or wholesale purchaser consumer, despite specification or inspection of procedures or equipment by the refiner which are reasonably calculated to prevent such action.

(ii) In this paragraph (c)(2), to show that the violation "was caused" by any of the specified actions, the party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(3) *Detergent blender.* In any case in which a detergent blender is liable for violating any of the prohibitions of § 80.155, the detergent blender shall not be deemed in violation if it can demonstrate, in addition to the defense requirements stated in paragraph (c)(1) of this section, the following:

(i) That it obtained or supplied, as appropriate, prior to the detergent blending, written instructions from the detergent manufacturer or other party with knowledge of such instructions, specifying the detergent's minimum recommended concentration as found in the 40 CFR part 79 registration and, where appropriate, the detergent's use limitations in regard to leaded product; and

(ii) That it has implemented a quality assurance program that includes, but is not limited to, a periodic review of supporting product transfer and volume measurement documents to confirm the correctness of the product transfer and volumetric additive reconciliation

documents created for the additized product.

(4) *Detergent manufacturer.* In any case in which a detergent manufacturer would be liable for violating any of the prohibitions of § 80.155 pursuant to paragraph (a) of this section, the detergent manufacturer shall not be in violation if it can demonstrate the following:

(i) Product transfer documents which account for the detergent component of the product in violation and which indicate that such detergent satisfied relevant requirements when it left the detergent manufacturer's control;

(ii) Test results performed in accordance with the detergent testing analysis submitted, or available for submission, by the manufacturer to EPA as part of the interim detergent program requirements. The test results must accurately establish that the detergent component of the product determined to be in violation was in conformity with the composition and concentration specifications of the detergent's 40 CFR part 79 registration when the detergent left the manufacturer's control; and

(iii) Written blending instructions that were supplied by the detergent manufacturer to its customer who purchased or obtained from the manufacturer the detergent component of the product determined to be in violation. The written blending instructions, which must have been supplied by the manufacturer to the customer prior to the customer's use or sale of the detergent, must accurately identify the minimum recommended concentration of the detergent necessary to control deposits, as specified in the detergent's 40 CFR part 79 registration, and must also accurately identify if the detergent, at that concentration, is only registered as effective for use in leaded gasoline.

(d) *Detergent manufacturer causation liability.* In any case in which a detergent manufacturer is liable for a violation of § 80.155 pursuant to paragraph (a) of this section, and the manufacturer establishes affirmative defense to such liability pursuant to paragraph (c) of this section, the detergent manufacturer will be liable for the violation of § 80.155 pursuant to this paragraph (d) of this section, provided that EPA can demonstrate, by reasonably specific showings by direct or circumstantial evidence, that the detergent manufacturer caused the violation.

§ 80.157 Volumetric additive reconciliation ("VAR"), equipment calibration, and recordkeeping requirements.

This section contains requirements for automated detergent blending facilities and hand-blending detergent facilities. All gasolines and all post-refinery components (PRC) intended for use in gasoline must be additized, unless otherwise noted in supporting VAR records, and must be accounted for in VAR records. The VAR reconciliation standard is attained under this section when the actual concentration of detergent used per VAR record equals or exceeds the lowest additive concentration (LAC) specified for that detergent in its 40 CFR part 79 registration, except as may be modified pursuant to § 80.141(d)(2). Each VAR record must identify the brands and grades of gasoline, and the types of PRC, being measured on that record. There must be a separate VAR record for leaded gasoline being additized with a detergent registered as effective for use with leaded gasoline only, or used at a concentration that is registered as effective for leaded gasoline only. Detergent being so used must be accurately and separately measured, either through the use of a separate storage tank for it, or a separate meter, or the use of some other measurement system that is able to accurately distinguish its use from that of other detergents. Measurements of detergent and gasoline must be precise to at least the nearest gallon.

(a) For an automated detergent blending facility, for each VAR period, for each detergent storage tank and each detergent in that storage tank, the following must be recorded:

(1) The manufacturer and commercial identifying name of the detergent additive package being reconciled, and the LAC specified for that detergent in its 40 CFR part 79 registration for use with the applicable type of gasoline (i.e., unleaded or leaded). The LAC must be expressed in terms of gallons of detergent per gallons of gasoline. The record must indicate if the specified LAC is only effective for use with leaded gasoline.

(2) The total volume of detergent blended into gasoline and PRC, in accordance with either paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section, as applicable.

(i) For a facility which uses in-line meters to measure detergent usage, the total volume of detergent measured, together with supporting data which includes one of the following: the beginning and ending meter readings for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied in the form of computer printouts or other comparable documentation.

(ii) (A) For a facility which uses a gauge to measure the inventory of the detergent storage tank, the total volume of detergent shall be calculated from the following equation:

Detergent Volume = (A) − (B)+(C) − (D)

where:

A = initial detergent inventory of the tank

B = final detergent inventory of the tank

C = sum of any additions to detergent inventory

D = sum of any withdrawals from detergent inventory for purposes other than the additization of gasoline or PRC.

(B) The value of each of the variables in the equation in paragraph (a)(2)(ii)(A) of this section must be separately recorded. In addition, a list of each detergent addition included in variable C and a list of each detergent withdrawal included in variable D must be provided.

(3) The total volume of gasoline plus PRC to which detergent has been added, together with supporting data which includes one of the following: the beginning and ending meter measurements for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied in the form of computer printouts or other comparable data.

(4) The actual detergent concentration, calculated as the total volume of detergent added (pursuant to paragraph (a)(2) of this section), divided by the total volume of gasoline plus PRC (pursuant to paragraph (a)(3) of this section).

(5) A list of each concentration rate initially set for the detergent that is the subject of the VAR record, together with the date and description of each adjustment to any initially set concentration. The concentration adjustment information may be supplied in the form of computer printouts or other comparable documentation. No concentration setting is permitted below the applicable LAC specified in the detergent's 40 CFR part 79 registration, except as may be modified pursuant to § 80.141(d)(2).

(6) The dates of the VAR period, which shall be no greater than a calendar month, and which shall in no event terminate beyond the end of the calendar month in which that VAR

period began. Any adjustment to any detergent concentration rate more than 10 percent over the concentration rate initially set in the VAR period shall terminate that VAR period and initiate a new VAR period.

(b) For a hand-blending detergent facility where any non-automated method is used to blend detergent, for each detergent and for each batch of gasoline and each batch of PRC to which the detergent is being added, the following shall be recorded:

(1) The manufacturer and commercial identifying name of the detergent additive package being reconciled, and the LAC specified for that detergent in its 40 CFR part 79 registration for use with the applicable type of gasoline (i.e., unleaded or leaded). The LAC must be expressed in terms of gallons of detergent per gallons of gasoline. The record must indicate if the specified LAC is only effective for use with leaded gasoline.

(2) The date of the additization that is the subject of the VAR record.

(3) The volume of added detergent.

(4) The volume of the batch of gasoline and/or PRC to which the detergent has been added.

(5) The brand, grade, and leaded/unleaded status of gasoline, and/or the type of PRC.

(6) The actual detergent concentration, calculated as the volume of added detergent (pursuant to paragraph (b)(3) of this section), divided by the volume of gasoline and/or PRC (pursuant to paragraph (b)(4) of this section).

(c) Every VAR formula record created pursuant to paragraphs (a) and (b) of this section shall contain the following:

(1) The signature of the creator of the VAR record;

(2) The date of the creation of the VAR record; and

(3) A certification of correctness by the creator of the VAR record.

(d) Automated detergent blenders must calibrate their detergent equipment each calendar quarter, in January, April, July, and October and each time the detergent package is changed.

(e) The following VAR supporting documentation must also be created and maintained; all volume measurements must be to at least the nearest gallon in accuracy:

(1) For all automated detergent blending facilities, documentation reflecting performance of the calibrations required by paragraph (d) of this section, and any associated adjustments of the automated detergent equipment;

(2) For all automated detergent blending facilities, a record specifying, for each VAR period, the volume in gallons of each transfer from the facility of unadditized base gasoline, identifying its date of transfer and the name of the recipient;

(3) For all hand blending facilities which are terminals, a monthly record specifying the volume in gallons of each transfer from the facility of unadditized base gasoline, identifying its date of transfer and the name of the recipient; and

(4) For all detergent blending facilities, product transfer documents for all gasoline, detergent and detergent-additized post-refinery component transferred into or out of the facility; in addition, bills of lading, transfer, or sale for all unadditized post-refinery component transferred into the facility.

(f) All detergent blenders shall retain the documents required to be created by this section for a period of five years from the date the VAR calculation records and VAR supporting documentation are created pursuant to this section, and shall deliver them to the EPA Administrator, or the Administrator's authorized representative, upon the Administrator's or the Administrator's authorized representative's request.

§ 80.158 Product transfer documents.

(a) *Contents.* For each occasion when any gasoline refiner, importer, reseller, distributor, carrier, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, carrier, or blender, transfers custody or title to any gasoline, detergent, or detergent-additized post-refinery component other than when detergent-additized gasoline is sold or dispensed at a retail outlet or wholesale purchaser-consumer facility to the ultimate consumer for use in motor vehicles, the transferor shall provide to the transferee, and the transferee shall acquire from the transferor, documents which accurately include the following information:

(1) The name and address of the transferee;

(2) The name and address of the transferor;

(3) The date of the transfer;

(4) The volume of product transferred;

(5)(i) The identity of the product being transferred (i.e., its identity as base gasoline, detergent, detergent-additized gasoline, or a specifically named detergent-additized oxygenate or detergent-additized gasoline blending stock that comprises a detergent-additized post-refinery component);

(ii) If the product being transferred consists of two or more different types of product subject to this regulation, *i.e.*, base gasoline, detergent-additized gasoline; or specified detergent-additized post-refinery component, then the product transfer document for the commingled product must identify each such type of component contained in the commingled product;

(6) If the product being transferred is base gasoline, the following must be stated on the product transfer document: "Base gasoline—Not for sale to the ultimate consumer";

(7) The name of the detergent as specified in its 40 CFR part 79 registration must be used to identify the detergent on its product transfer document;

(8) If the product being transferred is a leaded gasoline as defined in § 80.2(f), then the product transfer document must identify the product as leaded base gasoline or leaded detergent-additized gasoline, as applicable;

(9) If the product being transferred is detergent that is only authorized for the control of carburetor deposits, then the following must be stated on the detergent's transfer document: "For use with leaded gasoline only";

(10) If the product being transferred is detergent-additized gasoline that has been over-additized in anticipation of the later (or earlier) addition of post-refinery component, a statement that the product has been over-additized to account for a specified volume in gallons of additional, specified post-refinery component.

(b) Gasoline cannot be additized with a detergent authorized only for the control of carburetor deposits and whose product transfer document states "For use with leaded gasoline only", and gasoline cannot be additized at the lower concentration specified for a detergent authorized at a lower concentration for the control of carburetor deposits only, unless the product transfer document for the gasoline to be additized identifies it as leaded gasoline.

(c) *Recordkeeping period.* Any person creating, providing or acquiring product transfer documentation for gasoline, detergent, or detergent-additized post-refinery component shall retain the documents required by this section for a period of five years from the date the product transfer documentation was created, received or transferred, and shall deliver such documents to EPA upon request.

§ 80.159 Penalties.

(a) *General.* Any person who violates any prohibition or affirmative

requirement of § 80.155 shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or savings resulting from the violation.

(b) *Gasoline non-conformity.* Any violation of § 80.155(a) shall constitute a separate day of violation for each and every day the gasoline in violation remains at any place in the gasoline distribution system, beginning on the day that the gasoline is in violation of the respective prohibition and ending on the last day that such gasoline is offered for sale or is dispensed to any ultimate consumer.

(c) *Detergent non-conformity.* Any violation of § 80.155(d) shall constitute a separate day of violation for each and every day the detergent in violation remains at any place in the gasoline or detergent distribution system, beginning on the day that the detergent is in violation of the prohibition and ending on the last day that detergent-additized gasoline, containing the subject detergent as a component thereof, is offered for sale or is dispensed to any ultimate consumer.

(d) *Post-refinery component non-conformity.* Any violation of § 80.155(e) shall constitute a separate day of violation for each and every day the post-refinery component in violation remains at any place in the post-refinery component or gasoline distribution system, beginning on the day that the post-refinery component is in violation of the respective prohibition and ending on the last day that detergent-additized gasoline containing the post-refinery component is offered for sale or is dispensed to any ultimate consumer.

(e) *Product transfer document non-conformity.* Any violation of § 80.155(c) shall constitute a separate day of violation for every day the product transfer document is not fully in compliance. This is to begin on the day that the product transfer document is created or should have been created and to end at the later of the following dates: Either the day that the document is corrected and comes into compliance, or the day that gasoline not additized in conformity with interim detergent program requirements, as a result of the product transfer document non-conformity, is offered for sale or is dispensed to the ultimate consumer.

(f) *Volumetric additive reconciliation (VAR) record keeping non-conformity.* Any VAR recordkeeping violation of § 80.155(b) shall constitute a separate day of violation for every day that VAR recordkeeping is not fully in compliance. Each element of the VAR record keeping program that is not in compliance shall constitute a separate violation for purposes of this section.

(g) *Volumetric additive reconciliation (VAR) compliance standard non-conformity.* Any violation of the VAR compliance standard established in § 80.157 shall constitute a separate day of violation for each and every day of the VAR compliance period in which the standard was violated.

(h) *Volumetric additive reconciliation (VAR) equipment calibration non-conformity.* Any VAR equipment calibration violation of § 80.155(b) shall constitute a separate day of violation for every day a VAR equipment calibration requirement is not met.

§ 80.160 Exemptions.

(a) *Research, development, and testing exemptions.* Any detergent that is either in a research, development, or test status, or is sold to petroleum, automobile, engine, or component manufacturers for research, development, or test purposes, is exempted from the provisions of the interim detergent program, provided that:

(1) The detergent (or fuel containing the detergent) is kept segregated from non-exempt product, and the party possessing the product maintains documentation identifying the product as research, development, or testing detergent or fuel, as applicable, and stating that it is to be used only for research, development, or testing purposes; and

(2) The detergent (or fuel containing the detergent) is not sold, offered for sale, transferred, or offered for transfer from a retail outlet. It shall also not be transferred or offered for transfer from a wholesale purchaser-consumer facility, unless such facility is associated with detergent or fuel research, development or testing; and

(3) The party using the product for research, development, or testing purposes notifies the EPA, on at least an annual basis and prior to the use of the product, of the purpose(s) of the program(s) in which the product will be used and the volume of the product to be used. This information must be submitted to the following EPA address: Director (6406J), Field Operations and Support Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(b) *Racing fuel and aviation fuel exemptions.* Any fuel that is refined, sold, offered for sale, transferred, or offered for transfer as automotive racing fuel or as aircraft engine fuel, is exempted from the provisions of the interim detergent program, provided that:

(1) The fuel is kept segregated from non-exempt fuel, and the party possessing the fuel for the purposes of refining, selling, offering for sale, transferring, or offering for transfer the fuel as automotive racing fuel or as aircraft engine fuel, maintains documentation identifying the product as racing fuel or aviation fuel, as applicable, and stating that is it not for street or highway use in motor vehicles; and

(2) The fuel is not sold, offered for sale, transferred, or offered for transfer for highway use in a motor vehicle; and

(3) In the case of racing fuel, the fuel is sold, offered for sale, transferred, or offered for transfer to the ultimate consumer only at a racing facility.

§ 80.161–80.169 [Reserved]

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Part III

Department of Education

34 CFR Parts 690 and 691

Federal Pell Grant Program; Presidential Access Scholarship Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 690 and 691

RIN 1840–AB73

Federal Pell Grant Program; Presidential Access Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Pell Grant Program regulations and establishes regulations for the Presidential Access Scholarship Program. These regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA) as amended by the Higher Education Amendments of 1992, Public Law 102–325 (the 1992 Amendments), enacted on July 23, 1992 and the Higher Education Technical Amendments of 1993, Public Law 103–208 (1993 Technical Amendments), enacted on December 20, 1993.

The final regulations for the Federal Pell Grant Program change the program name from "Pell Grant Program" to "Federal Pell Grant Program." In addition, the regulations update student eligibility requirements and institutional administration requirements.

The final regulations for the Presidential Access Scholarship Program specify the eligibility requirements for a student to apply for and receive an award. These regulations also specify the roles of institutions of higher education, State officials, and State agencies in administering the program.

EFFECTIVE DATE: These regulations take effect on July 1, 1995 and apply to the 1995–96 and subsequent award years. However, affected parties do not have to comply with the information collection requirements in §§ 690.12, 690.13, 690.75, 690.82, 691.61, 691.73, 691.82, and 691.83 until the Department of Education publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1980.

FOR FURTHER INFORMATION CONTACT: Denise Boulanger, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue SW., Room 4018, Regional Office Building 3, Washington, D.C. 20202–5447. Telephone (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On February 25, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for the Federal Pell Grant Program and the Presidential Access Scholarship Program in the **Federal Register** (59 FR 9354) to implement portions of the 1992 Amendments and the 1993 Technical Amendments.

These regulations, a result of the NPRM and public comment on those proposed rules, implement the statutory changes required under the 1992 Amendments and the 1993 Technical Amendments to the HEA. The revised regulations—

- Rename the Pell Grant Program the Federal Pell Grant Program;
- Eliminate the duration of eligibility limitations for an undergraduate student without a baccalaureate degree or its equivalent;
- Implement the new academic year definition for the Federal Pell Grant Program by revising the methodology for calculating a Federal Pell Grant payment for a payment period. Revised methodologies are also included for programs of study offered by correspondence and for programs where the Secretary has granted an exception to the requirement that a program's academic year must include at least 30 weeks of instructional time;
- As a result of the passage of the Violent Crime and Law Enforcement Act of 1993, incarcerated students in Federal or State penal institutions are ineligible to receive Federal Pell Grants for any period of enrollment beginning on or after enactment of that Act. Incarcerated students, other than those in Federal or State penal institutions, are still eligible to receive Federal Pell Grants. The cost of attendance of those students under section 472(6) of the HEA is still limited to "tuition and fees and, if required, books and supplies." The provisions of this Act also repeal the statutory requirements that are the basis for the provisions in § 690.75 (f), (g), and (h) of the NPRM. These provisions are deleted from the final regulations.
- Incorporate references to the expected family contribution (EFC) under part F, title IV of the HEA and eliminate references to the Pell Grant Index (PGI);
- Eliminate the necessity that a student present a Student Aid Report (SAR) to an institution in order to be paid his or her Federal Pell Grant if the institution participates in the electronic or magnetic disbursement systems.
- Require an institution to pay a student on the basis of a valid Institutional Student Information Record (ISIR), *i.e.*, a report to an institution generated by the central processor that includes an applicant's application information and EFC;
- Provide that less-than-half-time students receive Federal Pell Grants; and
- Provide that, under certain circumstances, a full-time student pursuing an associate or baccalaureate degree may receive up to two Scheduled Federal Pell Grants within one award year. One of those circumstances is a determination by the Secretary that sufficient funds are available from the Federal Pell Grant Program appropriation for that award year to make all or part of a second Scheduled Federal Pell Grant award.

Conforming changes have also been made to incorporate changes made in the regulations governing Institutional Eligibility Under the Higher Education Act of 1965, as Amended, 34 CFR part 600 (59 FR 22324), and in the Student Assistance General Provisions, 34 CFR part 668 (59 FR 22348).

The regulations also implement the Presidential Access Scholarship (PAS) Program, a program to encourage students from low- and moderate-income families to upgrade their course of study at the high school level, finish high school, and attend college. However, funds have yet to be appropriated for the PAS Program.

Changes were made to the PAS Program regulations to parallel changes being made to the Federal Pell Grant Program regulations because the delivery of PAS Program funds would be done using the same delivery system as the Federal Pell Grant Program and conforming changes would simplify the administration of the PAS Program in the following provisions: § 691.2, § 691.3, § 691.61, § 690.64, § 691.66, § 691.77, § 691.82, and § 691.83.

Substantive Changes to the NPRMs

Part 690—Federal Pell Grant Program

The Federal Pell Grant Program application process is evolving from a paper to an electronic application process. To reflect that change and respond to public comment with regard to this evolution, the Secretary has made a number of changes in the final regulations.

A student may still submit a paper application to the Secretary for the latter to calculate the student's expected family contribution. A student applying using a paper application receives an SAR. Any institutions listed by the student on his or her application may also receive the student's application information and expected family contribution (EFC) from the central processor. At the election of the institution, the central processor may mail a magnetic record or paper document to the institution or electronically transmit the student's information to the institution.

The student may also apply electronically through the institution he or she is attending or plans to attend. Under this procedure, the student still may complete a paper application and obtain the necessary signatures on that application, *e.g.*, the student and at least one of the student's parents if the student is a dependent student. However, the student would bring the signed application to the institution. Alternatively, the student may complete an electronic application, and the student, and one of the student's parents if the student is dependent, sign a printout of the information entered on the electronic application. The institution would then transmit electronically the student's application information to the central processor. The central processor would calculate the student's EFC based upon the application information and transmit electronically the student's application information and EFC back to any institutions designated by the student to receive the information.

When an institution receives the student's application information and EFC from the central processor, the electronic or magnetic record or the paper document is considered an "Institutional Student Information Record" or "ISIR." If that information is accurate and complete as of the date of application, that electronic record or paper document is considered a "valid ISIR." Based upon that valid ISIR, the institution determines a student's eligibility for a Federal Pell Grant award and the amount of that award and pays the student his or her award. An institution receiving ISIRs may not require a student to submit an SAR as a precondition to receiving a Federal Pell Grant award. Thus, in general, the ISIR and valid ISIR are taking the place of the SAR and the valid SAR in the processing of Federal Pell Grant awards. However, an institution must pay a student a Federal Pell Grant award on the basis of receiving either a valid SAR or valid ISIR. An institution is not required to pay a student in circumstances where (1) the student is not qualified to receive a disbursement, *e.g.*, the student is in default on a Federal Stafford loan; or (2) the institution is specifically authorized by the Secretary to withhold payment, *e.g.*, the institution has requested, but not yet received, a financial aid transcript under 34 CFR 668.19.

As a result of this change and public comment on the proposed regulations that pointed out that current and proposed regulatory provisions were not in keeping with this change, the Secretary is revising several current and proposed regulatory provisions, as explained below.

As just noted, an institution pays a Federal Pell Grant award to a student on the basis of a valid ISIR, which is defined as a paper document or a computer-generated electronic or magnetic record that the Federal Pell Grant central processor transmits to an institution. This document takes the place of what was previously known as an electronic SAR or "ESAR" that an institution would receive under the Electronic Data Exchange (EDE). Therefore, the Secretary has amended the definition of a "valid SAR" to delete the reference to an SAR received under EDE.

The Secretary has also changed the signature requirements necessary to support a Federal Pell Grant award. The Secretary has deleted the requirement that a valid ISIR be signed. The ISIR is also valid if it accurately reflects corrections that (1) are based on signed correction documentation or documentation submitted under 34 CFR 668.57 and (2) are processed through the central processor.

The Secretary is adding § 690.63(a)(6) that designates the methodologies in § 690.63 that the institution uses to calculate a payment for a payment period if an institution is granted a waiver of the minimum 30-week requirement for the academic year.

The Secretary is removing § 690.64(c) that requires an institution to combine minisessions during payment periods that occur within two award years.

The Secretary is revising § 690.66 that establishes how to calculate a payment for a payment period for a program of study by correspondence. The revision incorporates the new academic year definition by requiring that payments for correspondence courses be calculated in a way that considers both the number of weeks of instructional time and the number of credit hours.

The Secretary is adding a new § 690.67 to the regulations allowing for up to 2 Scheduled Federal Pell Grant Program awards in an award year and is authorizing an institution that provides up to 2 Scheduled Federal Pell Grant awards in an award year to determine which students qualify for a second Scheduled Award within the award year using criteria established by the Secretary in this section.

The Secretary is removing § 690.77, Initial disbursement of a Pell Grant in an award year without a valid SAR.

The Secretary is adding requirements to § 690.82 to specify what types of application information must be retained at an institution when the institution submits a student's application information to the Secretary electronically. An institution has been required to retain a student's application information under its EDE participation agreement with the Secretary when that institution has submitted the student's application information electronically to the central processor. However, the Secretary believes that it is important to add to the record retention requirements in the regulations what types of application information must be retained rather than rely solely on an institution's EDE participation agreement. In addition, the Secretary, through publication of a notice in the **Federal Register**, is allowing for institutions to retain documents in media formats other than paper and microform. The Secretary intends to indicate in the notice the types of media storage acceptable to the Secretary and documents an institution may retain in media other than paper.

Part 691—Presidential Access Scholarship Program

There are no substantive differences between the PAS Program NPRM and the final regulations except where conforming changes were made to coordinate the PAS Program regulations with the Federal Pell Grant Program regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment on the NPRM, 61 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues and changes are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Federal Pell Grant Program

Section 690.2 General Definitions

Comments: None.

Discussion: The Secretary published final regulations governing Institutional Eligibility Under the Higher Education Act of 1965, as Amended, 34 CFR part 600, and the Student Assistance General Provisions, 34 CFR part 668, in the **Federal Register** on April 29, 1994. The Secretary is amending the Federal Pell Grant Program final regulations to reference accurately the definitions published in those final regulations. The Federal Pell Grant Program final regulations now reference in § 690.2(a) the definitions of "award year," "correspondence course," "incarcerated student," "regular student," and "State," as published in the Institutional Eligibility Under the Higher Education Act of 1965, as Amended, regulations at 34 CFR part 600, and the references to "award year," "regular student," and "State" in § 690.2(b) are removed. The Federal Pell Grant Program final regulations also update the references to the Federal Perkins Loan Program, Federal Supplemental Educational Opportunity Grant Program, and Federal Work-Study Program and reference the definitions of "full-time student" and "HEA" as published in the Student Assistance General Provisions regulations at 34 CFR 668.2. The references to the definitions of "full-time student," "Pell Grant Index," and "Student Aid Report Payment Document" under § 690.2(c) are removed. An institution must use the same definition of a full-time student for all title IV, HEA programs. The Federal Pell Grant Program final regulations also remove the reference to the definition for "Public or private nonprofit institution of higher education" in 34 CFR 668.2(b) since this definition is no longer used. The final regulations under § 690.2(c) add the definitions for "annual award," "central processor," "expected family contribution," "Institutional Student Information Record," "less-than-half-time student," "Student Aid Report Payment Voucher," and "valid Institutional Student Information Record."

The proposed definition of the term "academic year" in § 690.2(c) has been deleted. Instead, the final regulations reference the definition of that term in 34 CFR 668.2 of the Student Assistance General Provisions.

Changes: Section 690.2 of the final regulations is revised to reference the definition of the terms "award year," "incarcerated student," and "regular student" in 34 CFR part 600. Also, § 690.2 is revised to reference the definitions of the terms "full-time student" and "HEA" in 34 CFR part 668; to remove the reference to the definitions of the terms "award year," "regular student," and "Public or private nonprofit institution of higher education" in § 690.2(b); and to remove the definitions of the terms "academic year" and "full-time student" in § 690.2(c). The final regulations under § 690.2(c) also add the definitions for "annual award," "central processor," "expected family contribution," "less-than-half-time student," "Processed Information Record," "Student Aid Report Payment Voucher," and "Valid Processed Information Record."

Student Aid Report (SAR) Payment Document

Comments: While the definition of the term "Student Aid Report (SAR) payment document" was not discussed in the proposed regulations, one commenter believed that the definition of the term needed to be updated because the third part of an SAR is no longer called a "payment document" but, instead, is called a "payment voucher." The commenter also noted that the definition of an SAR payment document did not address the automated formats that many institutions use to submit payment information to the U.S. Department of Education (Department).

Discussion: The Secretary agrees that the name of the document used to report individual payment information to the Secretary has changed and is now called a "SAR payment voucher." The Secretary also agrees that automated methods of submitting the payment information are not addressed in the current definition nor does that definition accurately reflect the disbursement information that is required to be submitted by the institution for payment. The Secretary also agrees that the definition of a payment voucher needs to be updated and needs to provide for all forms of the payment voucher.

Further, most institutions currently submit their student payment information to the Secretary in an automated format. To ease the administrative burden for all institutions by reducing the amount of paperwork that institutions must handle through the manual encoding and batch preparation of paper Payment Vouchers in the submission process, and to accelerate the processing of payment information, the Secretary intends to provide that all institutions must submit student payment information to the Department in an automated format beginning with the 1996–97 award year. Therefore, at that time, the Department will no longer print paper payment vouchers with SARs. The Secretary believes that new costs to an institution because of this requirement are generally nonexistent. Most institutions currently have a personal computer or other technology that will allow them to process Payment Vouchers in this manner. In addition, the Department will provide all required software, and also the necessary training and guidance in using the software for automated Payment Voucher submissions.

Changes: The term "SAR payment document" is renamed a "payment voucher." The definition is revised to provide that a payment voucher is an electronic or magnetic record, or for the 1995–96 award year a paper record, that is provided to the Secretary by an institution showing a student's expected family contribution, cost of attendance, enrollment status, and student disbursement information.

Valid Institutional Student Information Record (ISIR)

Comments: A commenter noted that valid electronic SARs (ESARs) and valid ISIRs appear to be the same since they are both records of students' application information and EFCs provided directly to institutions by the central processor.

Discussion: The Secretary agrees and is revising the definition of the term "valid SAR" to, in effect, eliminate ESARs.

Changes: The Secretary is removing paragraph (2) in the definition of the term "valid SAR" that references EDE and serves as the basis for ESARs. A report to an institution of student information that is generated through EDE is encompassed by the term ISIR in the final regulations.

Section 690.2 General Definitions, Section 690.13 Notification of Expected Family Contribution, and Section 690.14 Applicant's Request for Recalculation of Expected Family Contribution Because of Clerical or Arithmetic Error

Comments: Several commenters questioned why a valid ISIR has signature requirements if the student's application for Federal student aid is properly signed. These commenters noted that the additional signature on the ISIR did not afford the Secretary additional protection against Federal Pell Grant awards being made on the basis of inaccurate information. Another commenter believed that the signature requirements for a valid ISIR should be consistent with the signature requirements for a valid paper SAR, which does not require a signature.

Another commenter requested increased flexibility in the program regulations regarding signature requirements. He believed that electronic documents increased the need for flexibility in these requirements and improved delivery of the Federal Pell Grant Program assistance to students at a large institution. He further believed that the signature requirements for valid ISIRs negated these improvements and that signatures were unnecessary because the signatures certifying the accuracy of the application information are collected on the application. Another commenter believed that, if the ISIR was the product of a paper application the student submitted through the postal service to the central processor, a signature need not be required.

Discussion: The Secretary agrees with the commenters that the signature requirement for a "valid ISIR" does not provide the Secretary with additional protection against the use of inaccurate information in calculating Federal Pell Grant awards, delays the award process and may needlessly increase the administrative burden on an institution. Therefore, the Secretary is removing that requirement. Application signatures will be on file, however, at the institution that transmitted the application data to the central processor or at the application processor if the student submitted a paper application.

In addition, if a student wishes to make corrections to the information previously reported for the purpose of having his or her expected family contribution recalculated, the student would either send a paper application or Part 2 of an SAR, that was certified by all appropriate parties, or would have its institution transmit that information. Under the latter circumstance, the institution would not transmit that information unless it had the student's certified "correction application," or documentation that contained appropriate signatures, such as verification documentation required under 34 CFR 668.57, supporting the change. Thus, for example, an institution would transmit a change in the adjusted gross income of the student's parents if the student provided the institution with his or her parents' signed Federal income tax return, and that tax return supported the changed adjusted gross income.

While the Secretary believes that it is reasonable to remove the signature requirements for a valid ISIR, he believes that a student should always receive a copy of his or her application information and EFC produced by the central processor so that the student has an opportunity to review the accuracy of his or her processed application information. Currently, because of processing system constraints, the Secretary can only generate an SAR if a paper application is received by one of the application processors. Therefore, for the 1995–96 award year, the Secretary will continue to provide a student with his or her application information and EFC only if the student submits a paper application or a correction on Part 2 of an SAR to an application processor. Because the Secretary cannot provide an SAR to a student whose application information is submitted through EDE, the Secretary is providing that for the 1995–96 award year an institution must provide to a student a copy of his or her application information and EFC from the central processor if the institution submits the student's application information or corrections through EDE since the student cannot receive his or her information in any other manner. In the 1996–97 and subsequent award years, once system changes have been implemented, the Secretary will provide a copy of the student's application information and EFC directly to each student, including those whose application information is transmitted to the central processor under EDE. The Secretary believes this change reduces the administrative burden associated with the ISIR signature requirements since signed correction documentation is already required and an institution will no longer need to collect a second signature on the ISIR to pay a student.

An ISIR produced from an application submitted to the Secretary should match the information on the student's application. (An ISIR can be generated by the central processor and transmitted to an institution if the student submits a paper application to an application processor and releases the information to the institution. In addition, an institution may obtain a ISIR through EDE if the student provides his or her PIN number to the institution.) If the student's information requires corrections, the documentation to support those corrections can be collected in several ways; however, the student's signature, and a parent's signature if the student is dependent, must be collected. The correction information and signatures can be collected on Part 2 of the SAR, a correction application, or, under EDE, a copy of the corrected information that is sent to the central processor. Also, if the institution (1) has verification documentation under 34 CFR 668.57 from the student, or one of the student's parents if the student is dependent, *e.g.*, tax returns, nontax filer statements, and verification worksheets, (2) makes corrections to the student's information based on the content of those documents through EDE, and (3) verifies the accuracy of the ISIR information generated from those corrections, the ISIR is valid.

Since the student need not return to the financial aid office to review the information on the ISIR and verify its accuracy, the institution must assume a greater responsibility for assuring that application information and corrections to application information submitted electronically from the institution accurately reflect the content of the application or correction documentation. The institution is reminded that it must resolve any inconsistent information concerning a student's application information in accordance with 34 CFR 668.16(f). If an institution using EDE makes an error and does not submit accurately the student's information from his or her application or corrections to the student's application information, the ISIR would not be valid, and the institution, under § 690.79, as well as the student would be liable for any overpayments made to the student. An institution is reminded that if, through institutional error, disbursements are made to a student without a valid SAR or ISIR, the institution may also be subject to a penalty, in addition to any liability for an overpayment, for improper administration of Federal Pell Grant Program funds. The institution must also assure that funds are only disbursed to an eligible student that the institution has documented as being enrolled in an eligible program of study at the institution before the student is paid.

Changes: The signature requirements for a valid ISIR are removed. In addition, §§ 690.2, 690.12, 690.13, and 690.14 of the regulations are revised. The EDE definition in § 690.2 is revised to reference the ISIR. Section 690.12 is modified to describe the EDE option of applying for a Federal Pell Grant. Section 690.13 is modified to indicate that the Secretary will forward to each applicant his or her student eligibility information starting in the 1996–97 award year. For 1995–96, under § 690.13(b) an institution must provide to all applicants whose data the institution transmits to the central processor through EDE, a copy of the applicant's student eligibility information received back from the central processor. Institutions must provide the information to ineligible students and students who do not attend that institution. Section 690.14 is

revised to require that corrections submitted through EDE be based on (1) information on an approved form *e.g.*, a correction application or Part 2 of an SAR, certified by the applicant and, if the applicant is dependent, one of the applicant's parents or (2) verification documentation provided by an applicant under 34 CFR 668.57.

Section 690.10 Administrative Cost Allowance to Participating Schools

Comments: Several commenters recommended that the Secretary clarify the term "significant number" of students as it is used in this section. If an institution enrolls a significant number of less-than-full-time or independent students, the regulations would require that the institution use a portion of its Federal Pell Grant administrative cost allowance funds to assure that financial aid services are available to those students. The commenters suggested "significant number" be defined as instances where 75 percent of an institution's students attend less-than-full-time or are independent.

Discussion: The Secretary believes the term "significant number" represents a number of students attending less-than-full-time or who are independent that is substantially less than 75 percent. However, the Secretary is not defining "significant number." Instead, the Secretary is relying on the institutions to be able to demonstrate to the Secretary through its annual audits or in a program review that their expenditures for financial aid services resulted in those services being reasonably available to those students.

Changes: None.

Section 690.61 Submission Process and Deadline Date for Student Aid Reports or Institutional Student Information Record

Comments: Several commenters supported the Secretary's proposal in § 690.61 to allow the institution to pay a student his or her Federal Pell Grant from either an SAR or ISIR. One commenter questioned why an institution was required to base a student's award on an eligibility document received from the Secretary. Another commenter requested clarification of the requirements to pay a student if the institution had received an ISIR and had not yet received an SAR.

Discussion: The Secretary added the use of the ISIR as an appropriate document to determine a student's Federal Pell Grant to implement the provisions of section 401(f) of the HEA as amended by the 1992 Amendments. Section 401(f) of the HEA mandates that an institution pay a student his or her Federal Pell Grant based on that document. Thus, when an institution receives a valid ISIR, it must pay a Federal Pell Grant to an otherwise eligible student based on the valid ISIR. An institution may not require the student to provide an SAR unless the institution relies solely on the SAR payment voucher to report Federal Pell Grant expenditures to the Secretary. In response to the other commenter, an institution must pay a student a Federal Pell Grant based on the receipt of a valid SAR. There are instances where a student will receive an SAR before the institution receives an ISIR.

Changes: None.

Section 690.63 Calculation of a Federal Pell Grant for a Payment Period

General

Comments: A commenter requested clarification concerning whether a student who had completed the credits for an academic year but had not yet completed the weeks of instructional time and had remaining eligibility from his or her Scheduled Federal Pell Grant award could be paid the remainder of that Scheduled Award.

Discussion: Section 481 of the HEA now defines an "academic year" as a period of at least 30 weeks of instructional time during which a student completes at least 24 semester or trimester hours or 36 quarter hours unless, for good cause on a case-by-case basis, the Secretary has reduced the 30-week minimum to not less than 26 weeks. Section 401(d) of HEA specifies the amount of a Federal Pell Grant that can be paid to a student for an academic year. Thus, a student must complete an academic year in both weeks of instructional time and clock or credit hours to receive his or her Scheduled Award. A student who has remaining eligibility from his or her Scheduled Award may always receive a payment for any amount of his or her remaining eligibility as long as he or she continues to be an eligible student enrolled in an eligible program for a payment period that is within that award year. For example, an institution defines a program's academic year as 24 semester hours and 30 weeks of instructional time. A full-time student enrolls in a program that provides 24 semester hours in 25 weeks of instructional time and the student completes 24 semester hours in 25 weeks. Therefore, because the student has not completed an academic year in both credit hours and weeks of instructional time, the student has not received his or her entire Scheduled Federal Pell Grant award. If the student enrolls and attends another payment period within that award year and that payment period is at least 5 weeks, the student may receive any amount remaining of his or her Scheduled Federal Pell Grant award.

Changes: None.

Comments: Three commenters at institutions subject to the Student Assistance General Provisions clock-hour/credit-hour formula in 34 CFR 668.8(d) proposed alternatives to that formula. The commenters proposed that, rather than determine the number of credit hours through the clock-hour/credit-hour formula, they retain the credits at their current value and determine a student's enrollment status simply by using the methodology in the full-time student definition in 34 CFR 668.2.

Discussion: The Secretary does not agree with the commenters' proposals that would, in effect, negate the clock-hour/credit-hour formula in 34 CFR 668.8(d). Thus, an institution subject to the clock-hour/credit-hour formula in 34 CFR 668.8(d) must first calculate the number of credit hours under the formula in 34 CFR 668.8(d) before a payment for a payment period can be determined and must use the result for all purposes in the title IV, HEA programs including calculating a Federal Pell Grant award. For example, an institution has a 24-semester-hour program of study before the clock-hour/credit-hour formula is applied. The 24 semester hours is completed in 18 weeks of instructional time. The institution defines the academic year for that program as 24 semester hours and 30 weeks of instructional time. A student attends 600 classroom hours to complete the 24 semester hours in the program. The clock-hour/credit-hour formula in 34 CFR 668.8(d) requires that one semester hour equals 30 classroom hours. Therefore, the program is 20 semester hours under the formula for title IV, HEA program purposes. The institution uses credit hours without terms. Therefore, it would use § 690.63(e) to calculate the student's Federal Pell Grant award for a payment period. Assuming the student's Scheduled Federal Pell Grant award was $2,340, the institution would first multiply $2,340 by 18/30 (18 being the number of weeks of instructional time in the program; 30 being the number of weeks of instructional time in the program's academic year definition) to equal $1,404; and then multiply $1,404 by 10/24 (10 being the number of credit hours in the payment period; 24 being the number of credit hours in the program's academic year definition) to

equal $585. Thus, the student would receive a $585 Federal Pell Grant award for each payment period.

The Secretary recommends that in addition to the information presented in the NPRM and these final regulations, an institution review the information in the 1994–95 Student Financial Aid Handbook (Handbook) in Chapter 4, Section 4. The Handbook presents detailed examples and explanations that are generally in accordance with the methodologies presented in these final regulations for calculating a payment for a payment period for the Federal Pell Grant Program.

Changes: None.

Payment for a Payment Period at Institutions Using Credit Hours With Terms

Comments: Several commenters supported the Secretary's proposed methods of calculating a payment for a payment period at a term institution. One commenter objected to one of the criteria proposed in § 690.63(a)(1) for using the methodology in § 690.63(b). The commenter believed that the requirement to have a full-time academic enrollment standard of at least 12 credit hours for all terms, including summer, rather than some lesser figure, such as at least 6 hours, was administratively burdensome. The commenter also suggested that the Federal Pell Grant Program establish an academic year policy interpretation similar to that of the Federal Family Education Loan (FFEL) programs. The commenter stated that under the FFEL programs' policy, if the "normal academic year" (fall through spring terms) for an institution meets the statutory definition of an academic year, and the student can be enrolled on at least a half-time basis in the summer, the summer should be treated as just another term. Another commenter proposed language to be added to § 690.63(a)(1) that would allow a student enrolled at least half-time who is taking a "concentrated course load" at a standard term institution over a shorter period of time than the standard term to have his or her award calculated based on that enrollment status under § 690.63(b).

Discussion: The criteria developed in § 690.63(a) for determining which methodology under § 690.63 (b) or (c) that an institution may use to calculate a Federal Pell Grant payment for a payment period for a term-based credit-hour program provides maximum institutional flexibility while meeting the intent of the statute and limiting the potential for fraud and abuse. The Secretary disagrees with the commenter that requiring a full-time student to be enrolled for at least 12 credit hours creates a new administrative burden on a term institution because this requirement is not a change in the current Federal Pell Grant Program requirements with which an institution must already comply. The definition of a full-time student requires that such a student be enrolled for at least 12 semester hours in a standard term for title IV, HEA program purposes. The only major change in this requirement is that the definition has been moved from the Federal Pell Grant Program regulations into the General Provisions regulations so that it is now consistent among all title IV programs.

Because of statutory program differences between the Federal Pell Grant Program and the FFEL programs, the academic year criteria cannot be implemented in the same manner. A Federal Pell Grant payment is based, in part, on enrollment status; the amount of the Federal Pell Grant award is reduced if a student attends less-than-full-time. Moreover, a Federal Pell Grant award is reduced if a student attends less than a full academic year. An FFEL Program loan can be certified for the maximum amount even if the student attends only half-time if the student's financial need supports the amount for which the loan is being certified.

Changes: None.

Comments: Two commenters believed that the prohibition against "multiple start dates" under the methodologies proposed in § 690.63(a)(1) or (a)(2) would prevent an institution from allowing a student to start classes at the beginning of any of an institution's terms rather than a specific term such as the fall quarter. One commenter asked what method of calculation was his institution to use in determining a student's payment for a payment period if his institution did not meet these particular criteria.

Discussion: The Secretary believes that there is not a clear distinction between the phrases "multiple start dates" and "overlapping terms." Therefore, the Secretary is removing the phrase "multiple start dates" from the final regulations. "Overlapping terms" refers to such institutional practices as starting new terms one right after the other. For example, an institution that offers a program that begins a new term every week or every month for a new group of students would be considered to have "overlapping terms" and would be required under § 690.63(a)(3) to use the methodology in § 690.63(d). If a term-based program does not meet the criteria under § 690.63(a)(1) or (a)(2), it must calculate awards under § 690.63(d).

Changes: The phrase "multiple start dates" is removed from § 690.63(a)(1)(i)(D) and (a)(2)(i)(D) of the regulations.

Comments: One commenter at a credit-hour term-based institution stated that the methodologies in § 690.63(b), (c), and (d) appeared complex. The commenter believed that the complexity arose in two ways. First, an institution that offered a wide variety of programs would be required to perform tracking for each program because of differing definitions of academic year. Second, complications would arise when a student transferred from one academic program to another within the same institution necessitating a recalculation of the student's Federal Pell Grant award. The commenter requested that the Secretary reexamine the administrative burden before implementing this section of the proposed regulations.

Discussion: The Secretary believes that at the majority of institutions, an institution uses the same definition of an academic year for most programs. In addition, the need to recalculate a student's award when he or she transfers between programs is not a new requirement created by the proposed rule. An institution has always had to redetermine eligibility and recalculate a student's award for any number of reasons, such as if a student enrolls in a new educational program that differs in program length from the old program.

Changes: None.

Comments: A commenter requested that the Secretary delay implementation of § 690.63 and extend the comment period because the Secretary had deliberately barraged the financial aid community with notices of proposed rulemaking in an attempt to provide the public with little time for review and comment. Another commenter expressed appreciation that the Secretary had provided a 45-day comment period on this NPRM and thanked the Secretary for his willingness to make significant changes to this provision before publication of the proposed regulations as a result of extensive discussions with the financial aid community.

Discussion: While it is true that a number of proposed rules for title IV student financial aid programs were published within a short period of time, it was not the intention of the Secretary to limit public comment on the proposed regulations. However, the Secretary has a statutory publication deadline of December 1, 1994, that he must meet in order for these regulations

to be effective for the 1995–96 award year. In the case of payment period calculations in § 690.63 of the proposed regulations, the Secretary began disseminating information to the public and provided training to the financial aid community about this section before the proposed regulations were published. Therefore, the Secretary believes that the public had sufficient time to provide thoughtful comment on these proposed regulations; these comments provided valuable information both before the proposed rule was published and in the development of these final regulations.

Changes: None.

Comments: A commenter requested clarification of the preamble statement regarding § 690.63(a)(1) that "the student will be eligible to be paid one-half of his or her Scheduled Award, if he or she has enough remaining eligibility (including, if eligible, a second Scheduled Award) for a summer term even if that term is not at least one-half of the academic year in weeks of instructional time."

Discussion: The statement is true for an institution that uses the methodology under § 690.63(b) to calculate a Federal Pell Grant payment for a payment period. The Secretary believes the following example clarifies the statement. An institution has a fall and spring semester. Each semester provides 15 weeks of instructional time in which a full-time student is required to complete 12 semester hours. Institution A defines its academic year as 30 weeks of instructional time in which a full-time student is expected to complete 24 semester hours. The institution also has a summer term that begins on June 15 and runs for 12 weeks. To be a full-time student in the summer term a student must enroll for at least 12 semester hours. Because the fall and spring semesters provide 30 weeks of instructional time, a full-time student would be paid one-half of his or her Scheduled Federal Pell Grant award in each of those semesters. If a student attends only the spring semester, the student would have half of his or her Scheduled Award remaining if he or she enrolls for the summer term. Even if the summer term provides only 12 weeks of instructional time, a full-time student would be eligible to receive the remaining half of his or her Scheduled Federal Pell Grant award because the institution satisfied the 30 weeks of institutional time requirement with the fall and spring semesters.

Changes: None.

Comment: A commenter suggested that the Secretary revise § 690.63(a)(1) to clarify that an institution may also choose to calculate the payment for a payment period under § 690.63(d) even if it qualifies to calculate the payment under § 690.63(b). The commenter also preferred that seasonal names like fall, winter, and spring, not be used to indicate terms because some institutions did not use those names. The commenter believed that the Secretary should select some other means of describing those terms.

Discussion: The Secretary believes that the language in the proposed regulations clearly indicates an institution may choose to calculate the payment for a payment period under § 690.63(d) even if it qualifies to calculate the payment under § 690.63(b).

The Secretary agrees that many institutions do not attach seasonal names to their standard terms. However, the Secretary is using the names generically to describe which methodology or methodologies an institution can use to calculate a payment for a payment period. The Secretary does not require that an institution provide seasonal names for its terms.

Changes: None.

Payments for a Payment Period for a Clock-Hour Program or a Credit Hour Program Without Terms

Comments: Several commenters believed there was an error in § 690.63(e) (2) and (3) of the proposed regulations that outline payment period calculations for credit-hour without terms and clock-hour programs. Those commenters believed that the requirement that an institution with a credit-hour without terms or a clock-hour program calculate the Federal Pell Grant payment for a payment period by considering both the timeframe and the clock or credit hours to be completed in the academic year was a mistake. The commenters believed that creating two ratios, one based on the weeks of instructional time and a second based on the clock or credit hours, and then multiplying the Scheduled Federal Pell Grant award by each ratio created a double reduction of a student's award. Other commenters believed that this provision was particularly unfair to economically disadvantaged students in clock-hour or credit-hour vocational programs without terms and was not legally supportable.

Discussion: The methodology in § 690.63(e) is not in error and is consistent with the definition of the term "academic year" contained in section 481(d) of the HEA and 34 CFR 668.2. Under each of the methods set forth in § 690.63 for calculating a Pell Grant award for a payment period, the Secretary takes into account two variables relating to an academic year: a credit- or clock-hour variable, at least 24 semester or trimesters, 36 quarters, or 900 clock hours; and a timeframe variable, at least 30 weeks of instructional time. Moreover, a student's Pell Grant award for a payment period is subject to reduction under each variable, if appropriate.

The credit- or clock-hour component is implemented under paragraphs (b) (1) and (2), (c) (1) and (2), and (d) (1) and (2) of § 690.63 by determining a student's "enrollment status" for a payment period and by calculating the award of a less-than-full-time student using the Disbursement Schedules. Under paragraphs (c)(3) and (d)(3), a student's award for a payment period is reduced again if the institution does not provide 30 weeks of instructional time. (No such reduction is required under paragraph (b) because, by definition, an institution may use paragraph (b) only if it provides at least 30 weeks of instructional time in its fall through spring terms.)

Under paragraph, (e) the procedure is somewhat different but the results are the same. An institution does not calculate a student's enrollment status and does not calculate an award for a less-than-full-time student by using the Disbursement Schedules. The institution determines the student's Scheduled Pell Grant award using the Payment Schedule, reduces that amount by the weeks of instructional time variable under § 690.63(e)(2) if the institution does not provide 30 weeks of instructional time, then calculates the award using the clock- or credit-hour variable. The Secretary in all the methodologies in § 690.63 first takes into consideration the length of a program's academic year in weeks of instructional time before considering the number of credit or clock hours within the academic year. For a program with terms, the institution must either determine the weeks of instructional time in its fall through spring terms or examine the weeks of instructional time in each term in relationship to its academic year definition. For a credit-hour program without terms or a clock-hour program, the institution examines the weeks of instructional time it takes a full-time student to complete the clock or credit hours in the program or the academic year. If it takes less than 30 weeks of instructional time for a full-time student to complete the clock or credit hours in the program or academic year, the Federal Pell Grant award must be reduced just as at a term institution. Second, for a term-based program an institution must determine a student's

enrollment status. If the student is not attending full-time, the award must be reduced to reflect the student's enrollment status. In a credit-hour program without terms or a clock-hour program, the payment for a payment period is not based on enrollment status but on how many clock or credit hours the student will complete in the payment period. Thus, to treat a student in a credit-hour program without terms or a clock-hour program in the same manner as a student in a term program, a second calculation must take place that equates to the adjustment for enrollment status at a term institution. The adjustment is the calculation of the number of clock or credit hours the student will complete in the payment period compared to the number of clock or credit hours in the academic year.

Changes: None.

Comments: Some commenters expressed concern that under the proposed regulations a student's Federal Pell Grant award in a program using credit hours without terms or clock hours may be somewhat less than the percentage of the academic year that the student may have completed.

Discussion: It is true that as a result of the mathematical formulas in the regulations, the calculations used to adjust a student's Scheduled Federal Pell Grant award at both a term institution and an institution using credit hours without terms or clock hours may result in an award that is somewhat less than the percentage of the academic year that the student may have completed. The Secretary believes that an institution has the flexibility to adjust its enrollment periods to conform to an academic year. Further, the Secretary believes that it was the intent of the 1992 Amendments that an institution offer instruction in a reasonable timeframe to ensure a favorable learning environment. The Secretary believes that the calculations may act as an additional incentive to encourage institutions to provide instruction in a timeframe that is more in keeping with the academic year definition and that the Secretary believes is most educationally beneficial to the student.

Changes: None.

Comments: Another commenter questioned whether the requirements of the regulations for credit-hour without terms and clock-hour programs were the same as those specified in the 1994–95 Delivery System Training. The commenter noted that the preamble of the NPRM did not mention the complete methodology for calculating timeframe fractions for the number of weeks of instructional time in the program divided by the number of weeks of instructional time in the academic year and fails to mention that an institution must use the lesser of that fraction or a fraction that divides the number of weeks in the academic year by the number of weeks in the academic year. The second fraction always results in the number one, as discussed in the 1994–95 Delivery System Training.

Discussion: The preamble of the Federal Pell Grant Program NPRM provided only a summary description of the timeframe component in calculating a payment for a payment period for a credit-hour without terms or clock-hour program. While the preamble discussion did mention the fraction based on the time it takes a full-time student to complete a program whose length is less than an academic year, the preamble did not describe the calculation for a program that requires a full-time student to attend longer than an academic year. In the latter case, the fraction can be less than or greater than one. However, since a student may not receive more than a Scheduled Federal Pell Grant for an academic year except as provided for under § 690.67, the institution must use the lesser of the result of the fraction for the timeframe requirement for an academic year or the number one.

Changes: The fraction in § 690.63(e)(2) has been modified to clarify that the fraction used for timeframe can never be greater than one.

Payments for a Payment Period for a Program Granted a Waiver to the Academic Year Definition

Comments: None.

Discussion: In the NPRM as well as the NPRM for the Student Assistance General Provisions regulations, the Secretary requested comments from the public on how to implement changes in the 1993 Technical Amendments in the academic year definition which provides that "* * * the Secretary may, on a case-by-case basis, reduce for good cause the 30-week minimum instructional time to not less than 26 weeks of instructional time in the case of an institution that provides a 2-year or 4-year program of instruction for which it awards an associate or baccalaureate degree * * *." While the Secretary did not receive any comments in connection with this NPRM, the Secretary did receive comments in connection with the NPRM for the Student Assistance General Provisions regulations. As a result, the Secretary implemented the statutory provision in 34 CFR 668.3.

If an institution receives a waiver of the 30 weeks of instructional time component for its academic year, the Secretary has provided instructions on how to accommodate that waiver under § 690.63(a)(6).

Institutions may use the methodologies in § 690.63 (b) or (d) for a program offered in terms and credit hours where a waiver of the 30-week requirement is granted. An institution may use the methodology in § 690.63(e) for a credit-hour without terms or a clock-hour programs where a waiver of the 30-week requirement is granted.

Changes: If an institution receives a waiver of the 30 weeks of instructional time requirement under 34 CFR 668.3, the institution may use § 690.63 (b), (d), or (e), as applicable, to calculate a student's award. If the institution qualifies to use the procedures in paragraph (b), no changes are necessary unless the provisions of paragraph (b)(3)(ii) apply. If the institution must use, or chooses to use, the procedures in paragraph (d) or (e), the institution will substitute the number of weeks in its academic year, *i.e.* 26, 27, 28, or 29, whenever any provision calls for the institution to use the number of weeks of instructional time in its academic year.

Section 690.64 Calculation of a Pell Grant for a Payment Period Which Occurs in Two Award Years

Comments: One commenter requested clarification on what constituted minisessions versus nonstandard terms. The commenter noted that under § 690.64(c) minisessions were required to be combined when a payment period occurred in two award years. However, there was no similar requirement for minisessions that occurred at other times during the award year, nor was there a similar requirement to treat nonstandard terms in this manner.

Discussion: The Secretary believes that there is little difference between minisessions and nonstandard terms except that minisessions have traditionally been assembled into one single payment period and a nonstandard term is a payment period by itself. Under § 690.64(c), institutions have been required to assemble minisessions into a single payment period when the payment period occurs in two award years. There has not been a similar requirement that an institution combine terms at any other time in the award year although many institutions have chosen to do so in accordance with policy guidance that the Department has issued. The Secretary believes that requiring an institution to combine minisessions at only one point during the award year serves little purpose. The requirement also limits an institution's flexibility in meeting the needs of its

students and may be administratively burdensome. The Secretary, therefore, believes it is not necessary to require that minisessions be combined in a payment period that occurs in two award years.

Changes: The Secretary removes § 690.64(c) that requires minisessions to be combined in a payment period that occurs within two award years.

Section 690.65 Transfer Student: Attendance at More Than One Institution During an Award Year

Comments: One commenter was unsure whether the provisions to provide a second Scheduled Federal Pell Grant award in an award year would apply to a transfer student and requested clarification of the language in § 690.65(c) that requires an institution to ensure that a transfer student receives no more than one Scheduled Federal Pell Grant award during an award year. The commenter asked if it was the Secretary's intent to change the historic practice of limiting a student to 100 percent of a Scheduled Federal Pell Grant award during an award year regardless of the number of institutions the student attends during the award year.

Discussion: The requirements for determining the amount of remaining Federal Pell Grant eligibility for a transfer student have not changed. However, if a student meets the requirements for a second Scheduled Federal Pell Grant award within the same award year under § 690.67, the institution receiving the transfer student may make disbursements to the student from his or her second Scheduled Federal Pell Grant award in accordance with § 690.63.

Changes: Section 690.65(c) is revised to permit a transfer student to receive a second Scheduled Award in an award year.

Comments: When a transfer student has been overpaid because of attendance at more than one institution, a commenter recommended that the regulations clarify which institution the student must repay. The commenter believed that the regulations should require the student to indicate which institution he or she would repay and restrict the institution at which the student is currently enrolled from making additional title IV disbursements until the student has indicated which institution he or she would repay.

Discussion: The Secretary believes that current Federal Pell Grant regulations under § 690.79 are clear regarding an institution's responsibility regarding overpayments to a transfer student. The Secretary does not believe that the current regulatory requirements, which designate responsibility for repayment when an overpayment occurs, should be changed to provide that a student determine which institution to repay. In addition, the Secretary believes that the student should not regain eligibility for title IV, HEA assistance until the Secretary has been repaid or determines that the overpayment has been resolved.

Changes: None.

§ 690.66 Correspondence Study

Comments: One commenter noted that the proposed regulations did not describe how to calculate a student's payment for a payment period if he or she was taking a program of study by correspondence. The commenter noted that the Secretary had not added the academic year timeframe requirement to the payment period calculations for a correspondence program.

Discussion: The Secretary agrees that the new academic year requirements must be incorporated into payment for a payment period calculations for correspondence study. The Secretary believes that the weeks of instructional time in the academic year for correspondence study can be determined from the written lesson schedule that must be developed by the institution. The written lesson schedule reflects a workload of at least 12 hours of preparation per week. Since correspondence programs generally are programs without terms, the Secretary believes that payments for payment periods for these programs can be calculated in much the same manner as clock-hour programs and credit-hour programs without terms. The Secretary is adapting the methodology under § 690.63(e) to determine a payment for a payment period for correspondence programs in § 690.63(f). If a correspondence program uses terms, the Secretary is providing that an institution may calculate a payment for a payment period using § 690.63(d). Of course, a student taking a program of study by correspondence is considered to be enrolled no more than half-time and can never receive more than one-half of his or her Scheduled Award. Therefore, the Secretary requires an institution to use the half-time Disbursement Schedule to calculate the payment for a payment period for a program of study by correspondence except in the case of a correspondence program offered using terms. In the latter circumstance, the institution would use the less-than-half-time Disbursement Schedule for a student enrolled in less than the hours necessary to be a half-time student.

Changes: Section 690.66 is revised to incorporate the academic year definition into the method for calculating a payment for a payment period for a program of correspondence courses. § 690.66 is also amended to incorporate consideration of enrollment status for students taking only correspondence courses in a term-based program.

Section 690.67 Receiving Two Scheduled Federal Pell Grant Awards During a Single Award Year

Comments: Several commenters responded to the Secretary's request for suggestions on how to implement fairly and equitably the statutory provisions in the 1992 Amendments and the 1993 Technical Amendments that permit a student to receive up to two Scheduled Federal Pell Grant awards in a single award year. One commenter believed that all students must be treated equitably and fairly regardless of the type of institution they attend, and recommended that any program whose courses are fully transferable into an associate or baccalaureate degree program be eligible for an additional Federal Pell Grant in an award year. Some commenters proposed that the Secretary determine a reasonable method to identify a student eligible to receive more than one Scheduled Federal Pell Grant award in the award year. One commenter recommended that to implement this provision, the Secretary should base his "case-by-case" approval not on a "student-by-student" basis, but on the entire program's academic calendar. It was proposed that a "blanket" approval apply to all students in an associate or baccalaureate degree program for which the institution has sought and received approval if the student completes more than an academic year's coursework and meets other program requirements. The approval would be requested by the institution from the Secretary. The commenter further proposed that a program should be approved based on its ability to provide a course of instruction that meets the statutory definition of an academic year in credit hours and weeks of instructional time. Any changes in the academic year definition or program structure at the institution should be reported to the Secretary immediately since approval would only be granted for the current program structure and changes would be subject to reapproval.

Discussion: The Secretary agrees that any implementation of this provision must be equitable and fair to all students eligible to receive a second Scheduled Federal Pell Grant award within the program's statutory

provisions. The 1992 Amendments and the 1993 Technical Amendments establish statutory eligibility criteria that a student must meet to receive a second Scheduled Federal Pell Grant award in an award year. The statutory criteria require that a student must be enrolled full-time in an associate or baccalaureate degree program and that the student must have completed all the credits for a complete academic year. A student who is enrolled in a program whose credits are fully transferable to an associate or baccalaureate degree program but is not enrolled in one of those degree programs is not eligible for a second award.

In addition, the Secretary believes that the information necessary for the Secretary to approve a student for a second Scheduled Award in an award year is maintained at the institution he or she is attending. Therefore, the Secretary believes that if an institution chooses to award up to two Scheduled Federal Pell Grants within an award year, the approval of a student for a second Scheduled Federal Pell Grant award should be entrusted to the institution. The Secretary does not believe that it is necessary to approve the program in which a student must enroll to be eligible for a second Scheduled Award if the student meets all other eligibility criteria.

The Secretary believes that a program's approval for this provision should not be based on whether an institution provides a course of instruction that meets the statutory definition of an academic year in both credit hours and weeks of instructional time. For example, an institution's definition of an academic year may not coincide with its academic calendar's enrollment periods, *i.e.*, it may have two semesters that total 28 weeks of instructional time. If a student completes an academic year's worth of credit hours yet fails to complete all the weeks of instructional time, the Secretary believes the student should still be eligible to receive additional Federal Pell Grant funds during an award year because the statute requires only that a student complete the coursework for an academic year to be eligible for a second Scheduled award, not the weeks of instructional time. The student would receive the remaining amount of his or her first Scheduled Federal Pell Grant award as he or she completes the weeks of instructional time in the first academic year in the payment period in which the student becomes eligible to receive funds from his or her second Scheduled Federal Pell Grant award. In the example, a student would have 2/30 of his or her first award remaining in a 12 semester-hour summer session. The student would receive the 2/30 balance of the first award and 12/30 of the second award in the summer session since under § 690.63(c) the payment for each payment period would be 14/30 of an annual award.

Changes: The Secretary adds a new section at § 690.67 describing the criteria under which a student may receive more than one Scheduled Award in an award year. The Secretary provides that an institution may determine which students are eligible for a second Scheduled Award in accordance with these criteria set forth in § 690.67.

Comments: Some commenters recommended that a student at a term institution be required to complete the equivalent of a full academic year of study in two semesters or trimesters or three quarters. The student would then be eligible for a second Scheduled Award to pursue additional work during a third semester or trimester or a fourth quarter. It was further recommended that full-time study for a student eligible to receive a second Scheduled Award in an award year be based on the norms required to complete the student's program as published by the institution. If the institutional norm was to complete 120 credits of a baccalaureate degree in 4 years, the student would be required to complete 30 credits during each academic year before he or she would be eligible for a second Scheduled Award.

Discussion: Since a full-time student normally completes a full academic year's worth of credit hours in two semesters or trimesters or three quarters, the Secretary does not believe that it is necessary to prescribe the number of terms over which the credits are earned. The Secretary also believes that it would be unfair to establish an academic year course load for a student using a criterion other than the one established for all students in the same program of study as long as the criterion met the minimum statutory requirement. A requirement greater than that criterion would make it more difficult for a student to qualify for a second Scheduled Award within an award year. However, under section 401(b)(6) of the HEA, a student must complete the coursework in an academic year before he or she can be considered for a second Scheduled Award. In addition, the Secretary believes that the student must be making satisfactory academic progress at the time he or she receives a second Scheduled Award. Therefore, this institution must verify, before disbursing funds from the second Scheduled Award, that a student is making satisfactory progress in his or her program of study under 34 CFR 668.7 and 668.16(e).

Changes: The Secretary has included provisions in § 690.67 that require a student to complete an academic year's coursework and to be making satisfactory progress in his or her program of study to be eligible to receive a second Scheduled Award from the Federal Pell Grant Program.

Comments: One commenter specified that the additional coursework for which a student enrolled should be coursework required for completion of his or her associate or baccalaureate degree.

Discussion: The Secretary agrees that additional coursework funded under this provision should be coursework that counts toward completion of a student's associate or baccalaureate degree program. Such a requirement is in keeping with the intent of this statutory provision to provide a student a means to continue his or her education without interruption throughout the pursuit of his or her associate or baccalaureate degree program.

Changes: The Secretary requires that coursework funded by the second Scheduled Award be either required courses or electives that will be counted toward completion of the student's associate or baccalaureate degree program.

Comments: Several commenters proposed methodologies to calculate the additional Federal Pell Grant eligibility by using ratios based either on the additional credits the student would take or, in the case of a term institution, the additional terms in which the student would enroll.

Discussion: The Secretary believes that the student's payment for a payment period should be determined using an appropriate methodology under § 690.63 or § 690.66. However, an institution must use the same methodology to calculate the payment for a payment period for all students in a program regardless of whether that calculation relates to a first or second Scheduled Federal Pell Grant for an award year.

Changes: None.

Section 690.77 Initial Disbursement of a Federal Pell Grant in an Award Year Without a Valid SAR or Valid Institutional Student Information Record

Comments: In the notice of proposed rulemaking the Secretary requested comment on whether to remove § 690.77. Most commenters supported

removal of this section because the rapid delivery of ISIRs through electronic means makes it unnecessary to make a first payment to a student without a valid SAR or ISIR. One commenter believed that elimination of this provision would reduce the cost and the burden of trying to collect an overaward from a student who did not submit a valid SAR after being paid. Two commenters believed that, while most institutions did not make payments to students without a valid SAR or ISIR, the provision should be retained. One commenter believed that the provisions in this section were mandated in the Federal Pell Grant Program statute.

One commenter, while not commenting on whether § 690.77 should be retained or removed, noted a difference in the liability language between §§ 690.77 (c)(1) and (c)(2). In § 690.77(c)(1) an institution is liable if it chooses to make a disbursement without a valid SAR or valid ISIR. In § 690.77(c)(2), both the student and the institution are liable for a disbursement made without a valid SAR or ISIR. The commenter believed that a student was not liable for an overpayment in § 690.77(c)(1) as he or she would be in § 690.77(c)(2). The commenter recommended that the language in the two provisions be rewritten to make both the student and the institution liable in § 690.77(c)(1) if a student requested a first disbursement without a valid SAR or ISIR and the institution could document the student's request.

Discussion: Although one commenter believed that this provision was mandated in the statute, the statute was changed in the 1992 Amendments to eliminate the statutory charge that required the Secretary to allow a payment of a Federal Pell Grant without a valid SAR or ISIR. Furthermore, the Secretary agrees with the majority of commenters that the provision is no longer necessary.

Since the Secretary believes that this provision is no longer necessary, revisions to the provisions under this section are not required.

Changes: The Secretary is removing § 690.77 from the Federal Pell Grant Program regulations.

Section 690.82 Maintenance and Retention of Records

Comments: Most commenters supported the Secretary's proposed change in § 690.82 that would eliminate the requirement in the Federal Pell Grant Program to retain an SAR regardless of whether the student received a Federal Pell Grant. Two commenters indicated that they understood the intent of the change in this provision was to eliminate the requirement to maintain eligibility documents for students receiving aid from other title IV programs or for other title IV program purposes. One other commenter, while supporting the reduction in the Federal Pell Grant Program record keeping requirements, recommended that the Secretary recognize that many institutions participate in the Federal Pell Grant Program electronically and maintain a computerized data base. The commenter suggested that those institutions be allowed to maintain the data in an electronic format rather than a paper one.

Discussion: The Secretary appreciates the public support of his proposal to change the record retention requirements for the Federal Pell Grant Program. The Secretary believes, however, that clarification is necessary since two commenters were unclear as to the Secretary's intent in making this change. Eliminating the requirement under the Federal Pell Grant Program for retaining the SAR or ISIR, regardless of whether the student received a Federal Pell Grant, does not eliminate the requirement to retain an SAR or ISIR if it has been used as an eligibility document to determine and pay a student Federal student aid under another title IV program or if the information was required to complete the institution's Fiscal Operations Application Report for the campus-based programs. The change would eliminate the need to retain an SAR or ISIR if an institution did not use it as an eligibility document, the student did not receive a Federal Pell Grant, another document had been used to award other title IV, HEA assistance, or the student was ineligible for title IV, HEA assistance.

The Secretary also agrees that it is reasonable to retain many of a student's financial aid documents in media formats other than paper. However, since the electronic technology is changing so quickly the Secretary believes that he should publish periodically, in a notice, a compilation of acceptable media storage formats and the documents that can be stored in those formats.

Changes: The Secretary has added a provision in § 690.82(e) to allow for the retention of information in media formats acceptable to the Secretary other than microform and the original documents. The Secretary will publish in the **Federal Register** a listing of the media formats and the documents that can be retained using those formats.

Comments: One commenter indicated that although the Secretary required an institution to retain a student's application for Federal student aid when his or her application information was submitted electronically to the Secretary, the regulations at § 690.82 did not specify a record retention requirement for the application. The commenter stated that the regulations should clarify: (1) How long the application must be retained; (2) the circumstances under which an application must be retained; and (3) what constitutes an acceptable application for retention purposes (*e.g.*, a Free Application for Federal Student Aid or a printout of an electronic application).

Discussion: The commenter is correct that the Secretary requires retention of any paper application signed by the student, and by one of his or her parents if the student is dependent, when that application is submitted to the Secretary electronically from an institution or its agent. The Secretary requires that the application be retained for all students whose applications were submitted from that institution and were processed by the Secretary regardless of whether the student attends that institution or receives title IV, HEA assistance. While the regulations have not been specific on the institutional responsibilities concerning retention of a student's application at the point of submission, the Secretary requires an institution, as part of its agreement to participate in EDE, to retain an application when the application information is submitted electronically to the central processor. However, the Secretary believes that the commenter is correct in questioning what the Secretary requires of an institution under such circumstances.

Changes: The Secretary has added a document maintenance requirement at § 690.82(b) for institutions that transmit electronically the application information to the Secretary. The signed application and signed copies of any corrections to application information must be retained any time an institution submits that application information electronically to the Secretary and the application information is processed by the Secretary, regardless of whether the student attends the institution or is eligible to receive a Federal Pell Grant.

Presidential Access Scholarship Program

Comments: Commenters generally commended the Secretary for his proposal to incorporate the Presidential Access Scholarship (PAS) Program into the Federal Pell Grant Program delivery

system as a way to eliminate additional burden on institutions.

Discussion: None.

Changes: None.

Section 691.16 Eligibility Requirements To Receive an Award

Comments: One of the criteria to determine eligibility to receive a PAS is to have ranked in the top 10 percent, by grade point average, of a student's secondary school graduating class. A commenter believed that the requirement to graduate in the top 10 percent of a student's class should be further defined so that students graduating in very small classes, who might have to study harder to be in the top 10 percent, would be treated equally with students graduating from larger classes. Another commenter requested that the Secretary clarify what determines that a student has graduated in the top 10 percent of his or her high school class.

Discussion: Section 406C of the 1992 Amendments requires that for a student to be eligible he or she either (a) participate in an eligible early-intervention program for a minimum of 36 months or (b) graduate in the top 10 percent, by grade point average, of his or her high school class. To determine whether a student is in the top 10 percent of his or her graduating class, the number of students in the graduating class is multiplied by .1. For example, if there are 250 students in the graduating class, 25 (250 x.1) are graduating in the top 10 percent of the class. If a student's high school does not rank its students, a student may only be considered eligible if the institution can factually and statistically document that the student would rank in the top 10 percent of graduating high school students statewide in his or her state. The institution may also consider the student's application if he or she has a GED test score equivalent to ranking in the top 10 percent of the GED test scores in the State.

Changes: None.

Section 691.61 Disbursement Conditions and Deadlines

Comments: The PAS Program regulations require that a student present written documentation that he or she has participated in an approved, eligible early-intervention program for at least 36 months or that he or she qualifies for a waiver under § 690.16(b) of the regulations. Several commenters requested clarification of the type of documentation the student must present to demonstrate that he or she has met these requirements. Another commenter recommended that to minimize the burden on institutions the student be required to submit documentation to determine participation in an eligible early-intervention program with his or her application for a Federal Pell Grant and PAS. This commenter believed that, in addition to lessening the burden on institutions, keeping this information with the central processor would allow the Secretary to keep track of eligible students more easily.

Discussion: An example of the documentation that a student can provide to establish that he or she participated in an eligible early intervention program would be a letter from the program director certifying that the student participated for at least 36 months in the eligible program. The documentation can be collected at the institution at the time the student applies to the institution for financial aid; thus, an unnecessary burden is not placed on an institution to request and maintain a certificate from a student indicating that he or she has participated in an eligible early-intervention program. In addition, a separate certificate could not be processed with the application for calculating a student's EFC since it is not relevant to calculating the student's EFC.

Changes: None.

Section 691.77 Initial Disbursement of a PAS in an Award Year Without a Valid SAR or Institutional Student Information Record

Comments: Several commenters indicated that, if this provision is removed from the Federal Pell Grant Program regulations because the provision was no longer necessary for the Federal Pell Grant Program, the Secretary should remove it from the PAS Program for similar reasons.

Discussion: The Secretary agrees that, since the section is being removed from the Federal Pell Grant Program, there is no need to retain the section under § 691.77.

Changes: Section 691.77 is removed from the final PAS Program regulations and reserved.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

Burdens specifically associated with information requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the final regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Paperwork Reduction Act of 1980

Sections 690.12, 690.13, 690.67, 690.75, 690.82, 691.61, 691.73, 691.82, and 691.83 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the U.S. Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

These regulations affect businesses or other for-profit organizations and nonprofit institutions that are eligible to participate in the title IV, HEA programs. The Department needs and uses the information to implement the 1992 Amendments for the Federal Pell Grant Program and PAS Program. The regulations provide the requirements that States, institutions, and students must follow to participate in these programs.

Federal Pell Grant

Annual public reporting and recordkeeping burden for this collection of information is reduced by 1140 hours because of the elimination of state recordkeeping and reporting requirements for 57 States and territories with enactment on September 13, 1994 of the Violent Crime and Law Enforcement Act of 1994 which amends section 401(b)(8) of the Higher Education Act of 1965, as amended.

Presidential Access Scholarship Program

Annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 hours per response for 57 States and territories and 2,280 total hours per year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Annual approved public reporting and recordkeeping burden for this

collection of information is: (1) 3 hours per response for 57 States and territories; and (2) 3 hours per response for 10,000 institutions. The approved total hours for States and institutions are 30,971 hours per year including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Colleges and universities, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

List of Subjects in 34 CFR Part 691

Administrative practice and procedure, Colleges and universities, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.063 Federal Pell Grant Program; Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned.)

Dated: September 27, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by amending part 690 and adding a new part 691 as follows:

PART 690—[AMENDED]

1. The authority citation for part 690 is revised to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted

2. The heading for part 690 is revised to read as follows:

PART 690—FEDERAL PELL GRANT PROGRAM

§§ 690.1, 690.2, 690.3, 690.6, 690.7, 690.9, 690.10, 690.11, subpart F, 690.62, 690.64, 690.65, 690.71, 690.72, 690.74, 690.75, 690.78, 690.79, 690.81, and 690.83. [Amended]

3. In part 690 add the word "Federal" before the words "Pell Grant" in the following places:

(a) Section 690.1;

(b) Section 690.2(c) under the terms "Disbursement Schedule" and "Scheduled Pell Grant";

(c) Section 690.3(a)(2)(ii);

(d) Section 690.6 (a) and (e);

(e) Section 690.7(a)(1) introductory text, (a)(2) (twice), (b) introductory text (twice), (c)(2), (c)(3), and (c)(4);

(f) Section 690.9(a) introductory text, (a)(1) (twice), (a)(2) introductory text, and (a)(2)(ii);

(g) Section 690.10 (a) and (b);

(h) Section 690.11 heading and text;

(i) Subpart F heading;

(j) Section 690.62(a);

(k) Section 690.64 heading and paragraphs (a)(2) and (b);

(l) Section 690.65(d) introductory text (twice), (d)(1) (twice), (d)(3), and (e) (three times);

(m) Section 690.71;

(n) Section 690.72(a);

(o) Section 690.75(a) introductory text, (a)(3)(i), (a)(3)(ii), (c), and (d) (twice);

(p) Section 690.78(c) introductory text;

(q) Section 690.79(a)(1) and (a)(2);

(r) Section 690.81(a)(2) and (b) (twice); and

(s) Section 690.83(a)(1) introductory text, (b)(1), and (c)(2).

§§ 690.74 and 690.81 [Amended]

4. In part 690 add the word "Federal" before the words "Pell Grants" in the following places:

(a) Section 690.74 (twice); and

(b) Section 690.81(c).

§ 690.2 [Amended]

5. and 6. Section 690.2 paragraph (a) is amended by removing in alphabetical order the terms "One-year training program", "Program of study by correspondence", Proprietary institution of higher education", "Postsecondary vocational institution", and "Six-month training program", and adding in alphabetical order the terms "Award year", "Correspondence course", "Regular student", and "State".

§ 690.2 [Amended]

7. Section 690.2 paragraph (b) is amended by adding in alphabetical order the terms "Federal Pell Grant Program", "Federal Perkins Loan Program", "Federal Supplemental Educational Opportunity Grant Program", "Federal Work-Study Program", "Full-time student", and "HEA", and removing the terms "Award year", "College Work-Study Program", "Income Contingent Loan (ICL) Program", "Perkins Loan Program", "Public or private nonprofit institution of higher education", "Pell Grant Program", "Regular student", "State", and "Supplemental Educational Opportunity Grant Program".

8. Section 690.2 paragraph (c) is amended by removing the definitions of "Full-time student", "Pell Grant Index", and "Student Aid Report (SAR) Payment Document"; by adding, in alphabetical order, new definitions of "Annual award", "Central processor", "Expected family contribution", "Institutional Student Information Record (ISIR)", "Less-than-half-time student", "Payment Voucher", and "Valid Institutional Student Information Record (valid ISIR)"; and by revising introductory text and paragraphs (1) and (2) of the definition of "Disbursement Schedule", and revising "Electronic Data Exchange", "Enrollment status", "Payment Schedule"; and "Valid Student Aid Report" to read as follows:

§ 690.2 General definitions.

* * * * *

(c) * * *

Annual award: The Federal Pell Grant award amount a full-time student would receive under the Payment Schedule for a full award year, and the amount a three-quarter-time, half-time, and less-than-half-time student would receive under the appropriate Disbursement Schedule for a full award year.

Central processor: An organization under contract with the Secretary that calculates an applicant's expected family contribution based on the applicant's application information, transmits an ISIR to each institution designated by the applicant, and submits reports to the Secretary on the correctness of its computations of the expected family contribution amounts and the accuracy of the answers to questions on application forms for the previous award year cycle.

* * * * *

Disbursement Schedule: A table showing the annual awards that three-quarter, half-time, and less-than-half-time students at term-based institutions using credit hours would receive for an academic year. This table is published

annually by the Secretary and is based on—

(1) A student's expected family contribution, as determined in accordance with title IV, part F of the HEA; and

(2) A student's attendance costs as defined in title IV, part F of the HEA.

* * * * *

Electronic Data Exchange: An electronic exchange system between the central processor and an institution under which—

(1) A student is able to transmit his or her application information to the central processor through his or her institution and an ISIR is transmitted back to the institution;

(2) A student through his or her institution is able to transmit any changes in application information to the central processor; and

(3) An institution is able to receive an ISIR from the central processor for a student.

Enrollment status: Full-time, three-quarter-time, half-time, or less-than-half-time depending on a student's credit-hour work load per academic term at an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours.

* * * * *

Expected family contribution (EFC): The amount, determined under title IV, part F of the HEA, which the student and the student's family may be reasonably expected to contribute toward the student's postsecondary education for the academic year.

* * * * *

Institutional Student Information Record (ISIR): A paper document or a computer-generated electronic record that the central processor transmits to an institution that includes an applicant's—

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC calculated by the central processor.

Less-than-half-time student: An enrolled student who is carrying less than half the work load of the appropriate minimum requirement outlined in the institution's definition of a full-time student.

* * * * *

Payment Schedule: A table showing a full-time student's Scheduled Federal Pell Grant for an academic year. This table, published annually by the Secretary, is based on—

(1) The student's expected family contribution, as determined in accordance with part F of title IV of the HEA; and

(2) The student's cost of attendance as defined in part F of title IV of the HEA.

* * * * *

Payment Voucher: An electronic or magnetic record, or for the 1995–96 award year a paper record, that is provided to the Secretary by an institution showing a student's expected family contribution, cost of attendance, enrollment status, and student disbursement information.

* * * * *

Valid Institutional Student Information Record (valid ISIR): An ISIR on which all the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

* * * * *

Valid Student Aid Report: A Student Aid Report on which all of the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

9. Section 690.3 is amended by revising the section heading and paragraphs (b)(1), (b)(2), and (b)(3), to read as follows:

§ 690.3 Payment period.

* * * * *

(b) *Payment periods for an eligible program that does not have academic terms:* (1) For a student whose eligible program is one academic year or less—

(i) The first payment period is the period of time in which the student completes the first half of his or her program as measured in credit or clock hours; and

(ii) The second payment period is the period of time in which the student completes the second half of his or her program as measured in credit or clock hours; or

(2) For a student whose eligible program is more than one academic year—

(i) For the first academic year, the first payment period is the period of time in which the student completes the first half of his or her academic year as measured in credit or clock hours, and the second payment period is the period of time in which the student completes the second half of that academic year.

(ii) For subsequent academic years, each payment period is the period of time in which the student first completes—

(A) One half of the academic year; or

(B) The remainder of the student's program.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, at an institution measuring progress in credit hours, if a student cannot earn half of his or her credits in the program under paragraph (b)(1) of this section or the academic year under paragraph (b)(2) of this section until after the midpoint between the first and last scheduled days of class, the student is considered to begin his or her second payment period on the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the program or academic year; or

(ii) The date, as determined by the institution, that the student has completed half of his or her academic coursework.

* * * * *

10. Section 690.6 is amended by removing paragraphs (c), (d), and (e), and by adding a second sentence to paragraph (b) to read as follows:

§ 690.6 Duration of student eligibility.

* * * * *

(b) * * * Any noncredit or remedial course taken by a student, including a course in English language instruction, is not included in the institution's determination of that student's period of Federal Pell Grant eligibility.

(Authority: 20 U.S.C. 1070a)

11. Section 690.8 is amended by revising paragraphs (c) and (d) to read as follows:

§ 690.8 Enrollment status for students taking regular and correspondence courses.

* * * * *

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular course work is considered a less-than-half-time student.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to 6 credits per term.

Under § 690.8	No. of credit hours regular work	No. of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c)[1]				Less-than-half-time.

[1] Any combination of regular and correspondence work that is greater than 0, but less than 6 hours.

12. Section 690.10 is amended by revising the authority citation at the end of the section, and by adding a new paragraph (c) to read as follows:

§ 690.10 Administrative cost allowance to participating schools.

* * * * *

(c) If an institution enrolls a significant number of students who are attending less-than-full-time or are independent students, the institution shall use a reasonable proportion of these funds to make financial aid services available during times and in places that will most effectively accommodate the needs of those students.

(Authority: 20 U.S.C. 1096)

13. Section 690.12 is amended by removing paragraph (c), by redesignating paragraph (b) as paragraph (c), by revising paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 690.12 Application.

(a) As the first step to receiving a Federal Pell Grant, a student shall apply on an approved application form to the Secretary to have his or her expected family contribution calculated. A copy of this form is not acceptable.

(b) The student shall submit an application to the Secretary by—

(1) Providing a copy of the application form, signed by all appropriate family members, to the institution at which the student attends or plans to attend so that the institution can transmit electronically the application information to the Secretary under EDE; or

(2) Mailing the paper application form to the Secretary.

* * * * *

(Authority: 20 U.S.C. 1070a)

14. Section 690.13 is revised to read as follows:

§ 690.13 Notification of expected family contribution.

(a) Beginning with the 1996–97 award year, the Secretary sends a student's application information and EFC as calculated by the central processor to each student and an ISIR to each institution designated by the applicant.

(b) For the 1995–96 award year, an institution participating in EDE shall provide a copy of a student's application information and EFC as calculated by the central processor to the student for whom it has transmitted the student's application information to the central processor.

(Authority: 20 U.S.C 1070a)

15. Section 690.14 is amended by revising the title of the section heading, and paragraph (c) is revised and redesignated as paragraph (b) to read as follows:

§ 690.14 Request for recalculation of expected family contribution because of clerical or arithmetic error.

* * * * *

(b) (1) If a student believes that a clerical or arithmetic error produced an inaccurate expected family contribution determination, the student may request a recalculation of that expected family contribution by submitting that request to the Secretary.

(2) A student makes that request by—

(i) Having his or her institution transmit that request under EDE to the Secretary; or

(ii) Mailing an approved form, certified by the student, and if the student is a dependent student, one of the student's parents, directly to the Secretary.

(3) If an institution transmits electronically the student's recalculation request to the Secretary, the corrected information must be supported by—

(i) Information contained on an approved form, that is certified by the student, and if the student is a dependent student, one of the student's parents; or

(ii) Verification documentation provided by a student under 34 CFR 668.57.

(4) The recalculation request must be received by the Secretary no later than the deadline date established by the Secretary through publication in the **Federal Register**.

(Authority: 20 U.S.C. 1070a)

16. Subpart C is removed and reserved.

17. Section 690.61 is revised to read as follows:

§ 690.61 Submission process and deadline for a Student Aid Report or Institutional Student Information Record.

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, an institution must disburse a Federal Pell Grant to an eligible student who is otherwise qualified to receive that disbursement if—

(i) The student submits a valid SAR to the institution; or

(ii) The institution—

(A) Obtains a valid ISIR for that student; and

(B) For the 1995–96 award year, electronically or magnetically transmits Federal Pell Grant disbursement data to the Secretary.

(2) In determining a student's eligibility to receive his or her Federal Pell Grant, an institution is entitled to assume that SAR information or ISIR information is accurate and complete except under the conditions set forth in 34 CFR 668.16(f) and 668.60.

(b) *Student Aid Report or Institutional Student Information Record deadline.* Except as provided in 34 CFR 668.60, for a student to receive a Federal Pell Grant for an award year, the student must submit the relevant parts of the SAR to his or her institution or the institution must obtain a valid ISIR by the earlier of—

(1) The last date that the student is still enrolled and eligible for payment at that institution; or

(2) June 30 of that award year.

(Authority: 20 U.S.C 1070a)

18. Section 690.62 is amended by revising the title of the section heading, by removing paragraph (c), and by revising paragraph (b) to read as follows:

§ 690.62 Calculation of a Federal Pell Grant.

* * * * *

(b) No payment may be made to a student if the student's annual award is less than $200. However, a student who is eligible for an annual award that is equal to or greater than $200, but less than or equal to $400, shall be awarded a Federal Pell Grant of $400.

19. Section 690.63 is revised to read as follows:

§ 690.63 Calculation of a Federal Pell Grant for a payment period.

(a)(1) *Programs using standard terms with at least 30 weeks of instructional time.* A student's Federal Pell Grant for a payment period is calculated under paragraphs (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Provides at least 30 weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section.

(2) *Programs using standard terms with less than 30 weeks of instructional time.* A student's Federal Pell Grant for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll in at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(ii)(A) of this section.

(3) *Other programs using terms and credit hours.* A student's Federal Pell Grant for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that—

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (a)(2) of this section.

(4) *Programs not using terms or using clock hours.* A student's Federal Pell Grant for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(5) *Programs of study offered by correspondence.* A student's Federal Pell Grant payment for a payment period is calculated under § 690.66 if the program is offered by correspondence courses.

(6) *Programs for which an exception to the academic year definition has been granted under 34 CFR 668.3.* If an institution receives a waiver from the Secretary of the 30 weeks of instructional time requirement under 34 CFR 668.3, an institution may calculate a student's Federal Pell Grant payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in—

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of paragraph (a)(1)(ii)(B) of this section, the program provides at least the same number of weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section as are in the program's academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e) of this section if the program is offered in credit hours without terms or clock hours.

(iii) The institution uses the methodology described in § 690.66 if the program is correspondence study.

(b) *Programs using standard terms with at least 30 weeks of instructional time.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time students; and

(3) Dividing the amount described under paragraph (b)(2) of this section by—

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year.

(c) *Programs using standard terms with less than 30 weeks of instructional time.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time students;

(3) Multiplying his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable:

In a program using semesters or trimesters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall and spring semesters}}{\text{The number of weeks in the program's academic year}}$$

; or

In a program using quarters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters}}{\text{The number of weeks in the program's academic year}}$$

; and

(4)(i) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or

(ii) Dividing the student's annual award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (c)(2) of this section over more than two terms for programs using semesters or trimesters or more than three quarters for programs using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year definition.

(d) *Other programs using terms and credit hours.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using terms and credit hours, other than those described in paragraphs (a)(1) or (a)(2) of this section, is calculated by—

(1)(i) For a student enrolled in a semester, trimester, or quarter, determining his or her enrollment status for the term; or

(ii) For a student enrolled in a term other than a semester, trimester, or quarter, determining his or her enrollment status for the term by—

(A) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year;

(B) Multiplying the fraction determined under paragraph (d)(1)(ii)(A) of this section by the number of credit hours in the program's academic year to determine the number of hours required to be enrolled to be considered a full-time student; and

(C) Determining a student's enrollment status by comparing the number of hours in which the student enrolls in the term to the number of hours required to be considered full-time under paragraph (d)(1)(ii)(B) of this section for that term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time student;

(3) Multiplying his or her annual award determined under paragraph (d)(2) of this section by the following fraction:

$$\frac{\text{The number of weeks of instructional time in the term}}{\text{The number of weeks of instructional time in the program's academic year}}$$

; and

(4) Paying the student the amount determined under paragraph (d)(3) of this section.

(e) *Programs using clock hours or credit hours without terms.* The Federal Pell Grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining the student's Scheduled Federal Pell Grant using the Payment Schedule;

(2) Multiplying the amount determined under paragraph (e)(1) of this section by the lesser of—

$$\frac{\text{(i) The number of weeks of instructional time required for a full-time student to complete the lesser of the clock or credit hours in the program or the academic year}}{\text{The number of weeks of instructional time in the program's academic year}}$$

; or

(ii) One; and

(3) Multiplying the amount determined under paragraph (e)(2) of this section by—

$$\frac{\text{The number of credit or clock hours in a payment period}}{\text{The number of credit or clock hours in the program's academic year}}$$

(f) A single disbursement may not exceed 50 percent of any award determined under paragraph (d) or (e) of this section. If a payment for a payment period calculated under paragraphs (d) or (e) of this section would require the disbursement of more than 50 percent of a student's annual award in that payment period, the institution shall make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student's annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program's academic year.

(g)(1) Notwithstanding paragraphs (b), (c), (d), and (e) of this section and 34 CFR 668.66, the amount of a student's award for an award year may not exceed his or her Scheduled Federal Pell Grant award for that award year except as provided in § 690.67.

(2) For purposes of this section and § 690.66, an institution must define an academic year for each of its eligible programs in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.2 and 668.3.

20. Section 690.64 is amended by removing paragraph (c).

21. Section 690.65 is amended by revising paragraphs (a), (c), and (f) to read as follows:

§ 690.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a Federal Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student may receive a Federal Pell Grant at the second institution only if—

(1) The student submits a valid SAR to the second institution; or

(2) The second institution obtains a valid ISIR.

* * * * *

(c) The second institution may pay a Federal Pell Grant only for that portion of the academic year in which a student is enrolled at that institution. The grant amount must be adjusted, if necessary, to ensure that the grant does not exceed the student's Scheduled Federal Pell Grant for that award year except as provided under § 690.67.

* * * * *

(f) A transfer student shall repay any amount received in an award year that exceeds—

(1) His or her Scheduled Federal Pell Grant; or

(2) The amount which he or she was eligible to receive for the award year under § 690.67.

22. Section 690.66 is revised to read as follows:

§ 690.66 Correspondence study.

(a) An institution calculates the Federal Pell Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component by—

(1) Determining the student's annual award using the half-time Disbursement Schedule;

(2) Determining the length of the correspondence program in weeks of instructional time by—

(i) Preparing a written schedule for submission of lessons that reflect a workload of at least 12 hours of preparation per week; and

(ii) Determining the number of weeks of instructional time in the program of study using the written schedule for submission of lessons;

(3) Multiplying the annual award determined from the Disbursement

Schedule for a half-time student by the lesser of—

(i) The number of weeks of instructional time as determined under paragraph (a)(2)(ii) of this section for a student to complete the lesser of the credit hours in the program or the academic year

The number of weeks of instructional time in the program's academic year definition

; or

(ii) One; and

(4) Multiplying the amount determined under (a)(3) of this section by—

The number of credit hours in the payment period

The number of credit hours in the program's academic year

(b) For purposes of paragraph (a) of this section—

(1) An academic year as measured in credit hours must consist of 2 payment periods—

(i) The first payment period must be the period of time in which the student completes the lesser of the first half of his or her academic year or program; and

(ii) The second payment period must be the period of time in which the student completes the lesser of the second half of the academic year or program; and

(2)(i) The institution shall make the first payment to a student for an academic year, as calculated under paragraph (a)(4) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(ii) The institution shall make the second payment to a student for an academic year, as calculated under (a)(4) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;

(2)(i) If the student is enrolled in at least 6 credit hours that commence and are completed in that term, the Disbursement Schedule for a half-time student is used; or

(ii) If the student is enrolled in less than 6 credit hours that commence and are completed in that term the Disbursement Schedule for a less-than-half-time student is used;

(3) A payment for a payment period is calculated using the formula in § 690.63(d) except that paragraphs (c) (1) and (2) of this section are used in lieu of § 690.63(d) (1) and (2) respectively; and

(4) The institution shall make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training shall be calculated under § 690.63(d) if the residential training is offered using terms and credit hours or § 690.63(e) if the residential training is offered using credit hours without terms.

23. A new section 690.67 is added to Subpart F to read as follows:

§ 690.67 Receiving up to two Scheduled Federal Pell Grant awards during a single award year.

(a) The Secretary announces in the **Federal Register** whether an institution may award up to a second Scheduled Federal Pell Grant to a student in a particular award year.

(b) Based on the announcement described in paragraph (a) of this section, an institution may award up to a second Scheduled Federal Pell Grant award to a student in that award year if—

(1) The student is enrolled as a full-time student in an eligible program that is at least 2 academic years as measured in credit hours and weeks of instructional time and leads to an associate or baccalaureate degree at an institution;

(2) The student is enrolled only in coursework required for completing his or her associate or baccalaureate degree, including courses in his or her major area of study or electives that fulfill the student's graduation requirements, during any payment period in which the student is paid any portion of his or her second Scheduled Federal Pell Grant award;

(3) In the previous payment periods in the award year the student has completed the number of credit hours required in an academic year leading to his or her associate or baccalaureate degree program; and

(4) The student has completed the weeks of instructional time required for an academic year or will complete them in the first payment period for which he or she will receive a payment from his or her second Scheduled Federal Pell Grant award.

(c) If an institution awards a student up to a second Scheduled Federal Pell Grant award, the institution must make such awards to all students who qualify under paragraph (a) of this section.

(Authority 20 U.S.C. 1070a)

§ 690.73 [Amended]

24. Section 690.73 is revised to read as follows:

When an institution is terminated under 34 CFR 668.86, the institution shall provide the following information to the Secretary:

(a) The name and enrollment status of each eligible student who submitted a valid SAR or for whom the institution received a valid ISIR before the termination date.

(b) The amount of funds the institution paid to each Federal Pell Grant recipient before the termination date.

(c) The amount due each student eligible to receive a Federal Pell Grant through the end of the award year.

(d) An accounting of Federal Pell Grant expenditures to the date of termination.

25. Section 690.75 is amended by revising paragraphs (a)(2), and (b) to read as follows:

§ 690.75 Determination of eligibility for payment.

(a) * * *

(2) Is enrolled as an undergraduate student; and

* * * * *

(b) If an eligible student submits a valid SAR to the institution or the institution receives a valid ISIR for that student and that student then becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for educational purposes before the student became ineligible.

* * * * *

§ 690.77 [Removed and Reserved]

26. Section 690.77 is removed and reserved.

27. Section 690.80 is amended by revising the title of the section heading and paragraphs (a) and (b)(1) to read as follows:

§ 690.80 Recalculation of a Federal Pell Grant award.

(a) *Change in expected family contribution.* (1) The institution shall recalculate a Federal Pell Grant award

for the entire award year if the student's expected family contribution changes at any time during the award year. The change may result from—

(i) The correction of a clerical or arithmetic error under § 690.14; or

(ii) A correction based on information required as a result of verification under 34 CFR part 668, Subpart E.

(2) Except as described in 34 CFR 668.60(c), the institution shall adjust the student's award when an overaward or underaward is caused by the change in the expected family contribution. That adjustment must be made—

(i) Within the same award year—if possible—to correct any overpayment or underpayment; or

(ii) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one academic term to another term within the same award year, the institution shall recalculate the Federal Pell Grant award for the new payment period taking into account any changes in the cost of attendance.

* * * * *

28. Section 690.82 is amended by revising paragraphs (a) introductory text and (a)(1); removing paragraph (d); redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively, and by adding new paragraphs (a)(8), (b), and (e) to read as follows:

§ 690.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification), which include the fiscal and accounting records that are required under § 690.81, records required for audits in 34 CFR 668.23, the SAR or ISIR of each student who received a Federal Pell Grant, and records indicating—

(1) The eligibility of all enrolled students who have submitted valid SARs to the institution or for whom the institution has received valid ISIRs;

* * * * *

(8) Documentation of a student's eligibility for any part of a second Scheduled Federal Pell Grant award in any award year.

(b) Each institution shall retain any completed applications and any other documents submitted by a student to the institution under § 690.14(c) if the application information is transmitted to the Secretary under EDE and is processed by the Secretary.

* * * * *

(e) An institution may substitute microform copies or other media formats acceptable to the Secretary, as published in a notice in the **Federal Register**, in lieu of original records in meeting the requirements of this section.

29. A new part 691 is added to read as follows:

PART 691—PRESIDENTIAL ACCESS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

691.1 Scope and purpose.
691.2 General definitions.
691.3 Payment period.
691.4 [Reserved]
691.5 [Reserved]
691.6 Duration of student eligibility.
691.7 Institutional participation.
691.8 Enrollment status for students taking regular and correspondence courses.
691.9 Written agreements between two or more eligible institutions.
691.10 [Reserved]
691.11 Payments from more than one institution.

Subpart B—Application Procedures and Eligibility Requirements

691.12 The application process.
691.13–691.14 [Reserved]
691.15 Eligibility to apply initially for a scholarship.
691.16 Eligibility requirements to receive an award.
691.17 Eligibility requirements to continue to receive an award.

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—Determination of Awards

691.61 Disbursement conditions and deadlines.
691.62 Calculation of a Presidential Access Scholarship Program award.
691.63 Calculation of a Presidential Access Scholarship for a payment period.
691.64 Calculation of a Presidential Access Scholarship for a payment period that occurs in 2 award years.
691.65 Transfer student: attendance at more than one institution during an award year.
691.66 Correspondence study.

Subpart G—Institutional Administration

691.71 Scope.
691.72 Institutional participation agreement.
691.73 Termination of institutional participation agreement.
691.74 [Reserved]
691.75 Determination of eligibility for payment.
691.76 Frequency of payment.
691.77 [Reserved]
691.78 Method of disbursement by check or credit to a student's account.
691.79 Recovery of overpayments.
691.80 Recalculation of a PAS Program award.
691.81 Fiscal control and fund accounting procedures.
691.82 Maintenance and retention of records.
691.83 Submission of reports.

Subpart H—Administrative Responsibilities of a State

691.90 Early-intervention agreement.
691.91 Records a State must maintain.

Authority: 20 U.S.C. 1070a–31 *et seq.*

Subpart A—General

§ 691.1 Scope and purpose.

The purposes of the Presidential Access Scholarship (PAS) Program are to encourage students to finish high school and attend college and to upgrade the course of study completed by high school graduates who are from low- or moderate-income families.

(Authority: 20 U.S.C. 1070a–31)

§ 691.2 General definitions.

(a) Definitions of the following terms used in this part are described in subpart A of the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600: Accredited Award year, Clock hour program, Correspondence course, Educational program, Eligible institution, Recognized equivalent of high school diploma, Regular Student, Secretary, and State.

(b) Definitions of the following terms used in this part are described in subpart A of the Student Assistance General Provisions, 34 CFR part 668: Academic year, Enrolled, Federal Pell Grant Program, Full-time student, and HEA.

(c) Other terms used in this part are:

Central processor: An organization under contract with the Secretary that calculates an applicant's expected family contribution based on the applicant's application data, transmits an ISIR to each of the institutions designated by the applicant, and submits reports to the Secretary on the correctness of its computations of the expected family contribution amounts and the accuracy of the answers to questions on application forms for the previous award year cycle.

Disbursement Schedule: A table showing the annual awards that three-quarter, half-time, and less-than-half-time students at term-based institutions using credit hours would receive for an academic year. This table is published annually by the Secretary and is based on—

(1) A student's expected family contribution, as determined in accordance with title IV, part F of the HEA; and

(2) A student's attendance costs as defined in title IV, part F of the HEA.

Electronic Data Exchange: An electronic exchange system between the central processor and an institution under which—

(1) A student is able to transmit his or her application information to the central processor through his or her institution and an ISIR is transmitted back to the institution;

(2) The student through his or her institution is able to transmit any changes in application information to the central processor; and

(3) The institution receives an ISIR from the central processor for that student.

Eligible early-intervention program: A program as required under § 691.16(a)(5) that provides education-related activities such as counseling, mentoring, academic support, outreach, and other supportive services, including providing information on opportunities for postsecondary financial aid, to students enrolled in preschool through grade 12. To qualify, a program must be one of the following:

(1) A Talent Search project as described in 34 CFR part 643 and authorized under section 402B of the HEA, as amended;

(2) An Upward Bound project as described in 34 CFR part 645 and authorized under section 402C of the HEA, as amended;

(3) An Opportunity Center as described in 34 CFR part 644 and authorized under section 402F of the HEA, as amended; or

(4) A National Early Intervention Scholarship and Partnership Program as authorized under section 404A of the HEA, as amended; or

(5) A program that is certified as an honors scholars program by the Governor of the State in which it is offered and that the Governor determines meets comparable requirements for any program funded under 34 CFR parts 643, 644, 645, or section 404A of the HEA.

Expected family contribution (EFC): The amount which the student and the student's family may be reasonably expected to contribute toward the student's postsecondary education for the academic year.

Half-time student: (1) Except as provided in paragraph (2) of this definition, an enrolled student who is carrying a half-time academic work load—as determined by the institution—that amounts to at least half the work load of the appropriate minimum requirement outlined in the institution's definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of work per week or is earning at least 6 credit hours per semester, trimester, or quarter. However, regardless of the workload, no student enrolled solely in correspondence study is considered more than a half-time student.

Honors scholars program: A program designed to encourage a high level of academic achievement from students who are enrolled in the program.

Institutional Student Information Record (ISIR): A paper document or a computer-generated electronic record that the central processor transmits to an institution that includes an applicant's—

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC calculated by the central processor.

Less-than-half-time student: An enrolled student who is carrying less than half the work load of the appropriate minimum requirement outlined in the institution's definition of a full-time student.

Payment Schedule: A table showing a full-time student's Scheduled PAS Award for an academic year. This table is published annually by the Secretary.

Payment Voucher: An electronic or magnetic record, or for the 1995–96 award year a paper record, that is provided to the Secretary by an institution showing a student's expected family contribution, cost of attendance, enrollment status, and student disbursement information.

Scheduled Presidential Access Scholarship: The amount of a PAS that would be paid to a full-time student for a full academic year. This table, published annually by the Secretary, is based on—

(1) The student's expected family contribution, as determined in accordance with part F of title IV of the HEA; and

(2) The student's cost of attendance as defined in part F of title IV of the HEA.

Student Aid Report (SAR): A report provided to an applicant showing the amount of his or her expected family contribution.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load—as determined by the institution—that amounts to at least three-quarters of the work of the appropriate minimum requirement outlined in the definition of a "full-time student."

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study that usually does not exceed 4 academic years or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student only for the first 4 academic years of that program.

Valid Institutional Student Information Record (valid ISIR): An ISIR on which all the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

Valid Student Aid Report: A Student Aid Report on which all of the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

(Authority: 20 U.S.C. 1070a–31 *et seq.*)

§ 691.3 Payment period.

(a) *Payment period for an eligible program that has academic terms:*

(1) Except as noted in paragraph (a)(2) of this section, for an eligible program that uses semesters, trimesters, quarters, or other academic terms, the payment period is the semester, trimester, quarter, or other academic term.

(2) For an eligible program that uses semesters, trimesters, quarters, or other academic terms and measures progress in clock hours—

(i) A payment period is a semester, trimester, quarter, or other academic term if the student completes all the clock hours scheduled for that term;

(ii) If at the end of a term, the student has not completed all of the clock hours scheduled for that term and the student has received a PAS for that term, the payment period extends beyond that term for as long as it takes the student to complete the number of clock hours originally scheduled for that term; and

(iii) If a payment period extends into another term, the next payment period consists of the number of clock hours scheduled for that term that were not included in the previous payment period.

(b) *Payment periods for an eligible program that does not have academic terms:* (1) For a student whose eligible program is one academic year or less—

(i) The first payment period is the period of time in which the student completes the first half of his or her

program as measured in credit or clock hours; and

(ii) The second payment period is the period of time in which the student completes the second half of his or her program as measured in credit or clock hours; or

(2) For a student whose eligible program is more than one academic year—

(i) For the first academic year, the first payment period is the period of time in which the student completes the first half of his or her academic year as measured in credit or clock hours, and the second payment period is the period of time in which the student completes the second half of that academic year.

(ii) For subsequent academic years, each payment period is the period of time in which the student first completes—

(A) One half of the academic year; or

(B) The remainder of the student's program.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section at an institution measuring progress in credits hours, if a student cannot earn half of his or her credits in the program under paragraph (b)(1) of this section or the academic year under paragraph (b)(2) of this section until after the midpoint between the first and last scheduled days of class, the student is considered to begin his or her second payment period on the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the program or academic year; or

(ii) The date, as determined by institution, that the student has completed half of his or her academic coursework.

(4) If an institution chooses to have more than two payment periods in an academic year, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(Authority: 20 U.S.C. 1070a–32)

§§ 691.4–691.5 [Reserved]

§ 691.6 Duration of student eligibility.

A scholarship under the PAS Program shall be awarded to a student for a period of—

(a) Not more than 4 academic years; or

(b) Not more than 5 academic years in the case of a student who is enrolled in an undergraduate course of study requiring attendance for the full-time equivalent of 5 academic years.

(Authority: 20 U.S.C. 1070a–32)

§ 691.7 Institutional participation.

(a)(1) An institution of higher education is eligible to award scholarships for the PAS Program if it—

(i) Meets the appropriate definition set forth in section 481 of the HEA;

(ii) Enters into a program participation agreement with the Secretary; and

(iii) Complies with that agreement and with the applicable provisions of this part and 34 CFR part 668.

(2) If an institution begins participation in the PAS Program during an award year, a student enrolled in and attending that institution is eligible to receive a PAS for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(b) If an institution becomes ineligible to participate in the PAS Program during an award year, an eligible student who was attending the institution and who submitted a valid SAR to the institution or whose institution received a valid ISIR from the U.S. Department of Education before the date the institution became ineligible is paid a PAS for that award year for—

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(c) An institution that becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name and enrollment status of each eligible student who, during the award year, received a PAS at the institution before it became ineligible;

(2) The amount of funds paid to each PAS recipient for that award year;

(3) The amount due each student eligible to receive a PAS through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the PAS expenditures for that award year to the date of ineligibility.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a–32)

§ 691.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which—

(1) Applies toward a student's degree or certificate;

(2) Is completed within the period of time required for regular course work; and

(3) Does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular course work is considered a less-than-half-time student.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to 6 credits per term.

Under § 691.8	No. of credit hours regular work	No. of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.

Under § 691.8	No. of credit hours regular work	No. of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c) [1]				Less-than-half-time.

[1] Any combination of regular and correspondence work that is greater than 0, but less than 6 hours.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a–32)

§ 691.9 Written agreements between two or more eligible institutions.

(a) A student who is enrolled in an eligible program at one eligible institution and taking courses at one or more other eligible institutions that apply toward his or her degree or certificate at the first institution may receive a PAS for attendance at both institutions only if there is a written agreement between the institutions.

(b) The institution at which the student is enrolled and expects to receive his or her degree or certificate shall determine and pay the student's PAS. However, the other institution may determine and pay the student's PAS if the institutions agree in writing to that arrangement.

(c) The institution that determines and pays the PAS shall—

(1) Take into account all courses that apply to the student's degree or certificate taken by the student at each eligible institution participating in the agreement when determining the student's enrollment status and cost of attendance; and

(2) Maintain all records regarding the student's eligibility for and receipt of the PAS.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a–32)

§ 691.10 [Reserved]

§ 691.11 Payments from more than one institution.

A student is not entitled to receive PAS Program payments concurrently from more than one institution or from the Secretary and an institution.

(Authority: 20 U.S.C. 1070a–32)

Subpart B—Application Procedures and Eligibility Requirements

§ 691.12 The application process.

Each eligible student desiring to apply for a PAS shall—

(a) Submit annually an application to the Secretary on the same approved form and at the same time the student applies for a Federal Pell Grant;

(b) Provide the application to the Secretary within the time frame required to apply for a Federal Pell Grant; and

(c) Provide such information as is required to apply for a Federal Pell Grant.

(Authority: 20 U.S.C. 1070a–33)

§§ 691.13–691.14 [Reserved]

§ 691.15 Eligibility to apply initially for a scholarship.

A student is eligible to apply for a PAS for his or her first year of postsecondary study if the student—

(a) Is scheduled to graduate from or is a graduate of a public or private secondary school, or has the equivalent of a high school diploma as recognized by the State in which the eligible student resides, but has not yet received a baccalaureate degree; and

(b) Is either enrolled, accepted for enrollment, or intends to enroll, at an institution of higher education not later than 3 calendar years after the date that the student graduates from secondary school or obtains the recognized equivalent of a high school diploma.

(Authority: 20 U.S.C. 1070a–35)

§ 691.16 Eligibility requirements to receive an award.

(a) A student is eligible to receive a PAS for his or her first year of postsecondary study if the student—

(1) Is eligible to receive a Federal Pell Grant in the award year in which the PAS is awarded;

(2) Is enrolled or accepted for enrollment in a degree or certificate program of at least 2 years in length;

(3) Has demonstrated academic achievement and preparation for postsecondary education by taking the following college preparatory level coursework that includes at least—

(i) Four years of English;

(ii) Three years of science;

(iii) Three years of mathematics;

(iv) Either—

(A) Three years of history; or

(B) Two years of history and one year of social studies; and

(v) Either—

(A) Two years of foreign language; or

(B) One year of computer science and 1 year of foreign language;

(4) Has earned a grade point average of 2.5 or higher, on a scale of 4.0, in the final 2 years of high school; and

(5) Has either (i) participated for a minimum period of 36 months in an eligible early-intervention program; or

(ii) Ranked in the top 10 percent, by grade point average, of the student's secondary school graduating class.

(b) Notwithstanding the requirements in paragraph (a)(5) of this section, a student may receive a PAS if an authorized official of the State in which the student resides certifies to the Secretary that the student was unable to participate in an eligible early-intervention program because—

(1) The program was not available in the area where the student resides; or

(2) Due to unusual and exceptional circumstances, the student was unable to participate in such a program.

(c) Notwithstanding the requirements in paragraph (a)(3) of this section, a student may receive a PAS if the student's secondary school does not offer the necessary coursework required in paragraph (a)(3) of this section, and the student has completed the required coursework at another local secondary school or at a community college.

(d) Notwithstanding the requirements in paragraph (a)(3)(v) of this section, a student may receive a PAS if the student is—

(1) Fluent in a language other than English and participates in a program to learn English; or

(2) An English-speaking student who is fluent in a second language.

(Authority: 20 U.S.C. 1070a–33, 1070a–35, 1070a–36(c))

§ 691.17 Eligibility requirements to continue to receive an award.

(a) To be eligible to continue to receive a PAS after the first year of postsecondary study, a student shall—

(1) Continue to meet the eligibility requirements in § 691.16(a) (1) and (2); and

(2) Fulfill the requirements for satisfactory academic progress as described in 34 CFR in 668.7(c) (the Student Assistance General Provisions regulations) and section 484(c) of the HEA.

(b) If a student ceases to be eligible for a PAS because he or she is no longer eligible for a Federal Pell Grant, the student can later regain eligibility to receive a PAS at the time he or she qualifies for a Federal Pell Grant.

(Authority: 20 U.S.C. 1070a–33)

Subparts C–E—[Reserved]

Subpart F—Determination of Awards

§ 691.61 Disbursement conditions and deadlines.

(a) *Submission process.* An institution makes a disbursement of a PAS to a student only if—

(1) The student submits a valid SAR to the institution; or

(2) The institution obtains a valid ISIR for that student; and

(3)(i) The student presents a certificate issued by an appropriate official of a high school in a State verifying that the student has completed the necessary coursework to qualify for a PAS; or

(ii) The student presents written documentation that he or she has participated in an approved eligible early-intervention program for at least 36 months or qualifies for an exception under §§ 691.16(b).

(4) In determining a student's eligibility to receive his or her Federal Pell Grant, an institution is entitled to rely on valid SAR information or valid ISIR information except under the conditions set forth in 34 CFR 668.14(f) and 668.60.

(b) *Student Aid Report or Institutional Student Information Record deadline.* Except as provided in 34 CFR 668.60, for a student to receive a PAS award for an award year, the student must submit the relevant parts of the SAR to his or her institution or the institution must obtain a valid ISIR—

(1) While the student is still enrolled and eligible for payment at that institution; and

(2) By June 30 of that award year.

(Authority: 20 U.S.C. 1070a–32)

§ 691.62 Calculation of a Presidential Access Scholarship Program award.

The amount of a student's PAS for an academic year is equal to 25 percent of the student's Federal Pell Grant awarded for that academic year as determined under 34 CFR 690.62 except that—

(a) If funding in a fiscal year is sufficient to fund fully all eligible student awards in that academic year, no payment shall be made to a full-time student of less than $400 for an academic year, independent of the amount of the Federal Pell Grant.

(b) If funding is insufficient to fund fully all eligible students, the Secretary reduces each student's award in proportion to the amount that the PAS Program is not fully funded.

(Authority: 20 U.S.C. 1070a–32)

§ 691.63 Calculation of a Presidential Access Scholarship for a payment period.

For an eligible student enrolled in an institution of higher education in an eligible program, the student's PAS for each payment period is calculated by—

(a) Determining his or her total PAS award in accordance with § 691.62; and

(b) Determining the amount of each payment based on the payment amount for a Federal Pell Grant as calculated in accordance with § 690.63.

(Authority: 20 U.S.C. 1070a–32)

§ 691.64 Calculation of a Presidential Access Scholarship for a payment period that occurs in 2 award years.

(a) If a student enrolls in a payment period that is scheduled to occur in 2 award years—

(1) The entire payment period must be considered to occur within 1 award year.

(2) The institution shall determine for each PAS recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraph (a)(3) of this section.

(3) The institution shall place a payment period with more than 6 months scheduled to occur within 1 award year in that award year.

(4) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year.

(5) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(b) An institution may not make a payment that will result in the student receiving more than his or her Scheduled PAS for an award year.

(Authority: 20 U.S.C. 1070a–32)

§ 691.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a PAS at one institution subsequently enrolls at a second institution in the same award year, the student may receive a PAS at the second institution only if—

(1) The student has submitted a valid SAR; or

(2) The second institution participates in the Secretary's electronic programs to report Federal Pell Grant disbursement data electronically to the Secretary and the second institution has obtained a valid ISIR, in which case the institution shall use the information from the valid ISIR to determine the amount of the student's award. (The institution shall follow the procedures set forth in 34 CFR 668.19 relating to financial aid transcripts.)

(b) The second institution shall calculate the student's award according to § 691.63.

(c) The second institution may pay a PAS only for that portion of the award year in which a student is enrolled at that institution. The scholarship amount must be adjusted, if necessary, to ensure that the scholarship award does not exceed the percentage of the award remaining from the student's first institution for that award year.

(d) If a student's PAS award at the second institution differs from the Scheduled PAS Award at the first institution, the award amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the PAS award at the first institution to determine the percentage of the PAS award that the student has received.

(2) The percentage in paragraph (d)(1) of this section is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the Scheduled PAS award at the second institution to which the student is entitled.

(e) The student's PAS award for each payment period is calculated according to the procedures in § 691.63, unless the remaining percentage of the Scheduled PAS at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's PAS is equal to the remaining percentage.

(f) A transfer student shall repay any amount received in an award year which exceeds his or her Scheduled PAS.

(Authority: 20 U.S.C. 1070a–32)

§ 691.66 Correspondence study.

For an eligible student enrolled in an institution of higher education in an eligible program of correspondence study, the student's PAS for each payment period is calculated by—

(a) Determining his or her total PAS award in accordance with § 691.62; and

(b) Determining the amount of each payment based on the payment amount

for a Federal Pell Grant as calculated in accordance with § 690.66.

(Authority: 20 U.S.C. 1070a–32)

Subpart G—Institutional Administration

§ 691.71 Scope.

This subpart deals with program administration by an institution of higher education. An institution shall enter into a program participation agreement with the Secretary so that it may calculate and pay PAS awards to students.

(Authority: 20 U.S.C. 1070a–32)

§ 691.72 Institutional participation agreement.

The Secretary may enter into an agreement with an institution of higher education pursuant to which the institution will calculate and pay PAS awards to its students.

(Authority: 20 U.S.C. 1070a–32)

§ 691.73 Termination of institutional participation agreement.

When an institution is terminated under 34 CFR 668.86, the institution shall provide the following information to the Secretary—

(a) The name and enrollment status of each eligible student who submitted a valid SAR or for whom the institution received a valid ISIR before the termination date.

(b) The amount of funds the institution paid to each PAS recipient before the termination date.

(c) The amount due each student eligible to receive a PAS through the end of the award year.

(d) An accounting of PAS expenditures to the date of termination.

(Authority: 20 U.S.C. 1070a–32)

§ 691.74 [Reserved]

§ 691.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a PAS to an eligible student only after it determines that the financial aid transcript requirements of 34 CFR 668.19 have been met, and the student—

(1) Qualifies as eligible to receive a Federal Pell Grant and as an eligible student under §§ 691.16 or 691.17 for a continuing student;

(2) Is enrolled as an undergraduate student; and

(3)(i) Has completed required clock hours for which he or she has been paid a PAS, if the student is enrolled in an eligible program that is measured in clock hours; or

(ii) Has completed the required credit hours for which he or she has been paid a PAS, if the student is enrolled in an eligible program that is measured in credit hours and that does not have academic terms.

(b) If an eligible student submits a valid SAR to the institution or the institution receives a valid ISIR for that student and that student then becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress but reverses that determination before the end of the payment period, the institution may pay a PAS to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress but reverses that determination after the end of the payment period, the institution may neither pay the student a PAS for that payment period nor make adjustments in subsequent PAS payments to compensate for the loss of aid for that period.

(e) A member of a religious order, community, society, agency, or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution of at least $3,000 if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members or has directed the member to pursue the course of study.

(Authority: 20 U.S.C. 1070a–32)

§ 691.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was an eligible student within the award year. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a–32)

§ 691.77 [Reserved]

§ 691.78 Method of disbursement by check or credit to a student's account.

(a) (1) The institution may pay a student directly by check or by crediting his or her institutional account.

(2) Unless a student has agreed otherwise, the amount an institution may credit to a student's account may not exceed the amount the student is required to pay the institution for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Housing, if the student contracts with the institution for housing.

(3) An institution may not require a student to grant permission to credit his or her account for the costs of other goods and services the institution provides to the student.

(4) The institution shall notify the student of the amount he or she can expect to receive and how that amount will be paid.

(b) (1) The institution may not make a payment to a student for a payment period until the student is registered for classes for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may credit a registered student's account is 3 weeks before the first day of classes of a payment period.

(c) The institution shall return to the Secretary any funds paid to a student who, before the first day of classes—

(1) Officially or unofficially withdraws; or

(2) Is expelled.

(d) (1) If an institution intends to pay a student directly, it shall notify him or her before the payment is made when it will pay the PAS award.

(2) If a student does not pick up the check on time, the institution shall still pay the student if he or she requests payment within 15 days after the last date that his or her enrollment ends in that award year.

(3) If the student has not picked up his or her payment at the end of the 15-day period, the institution may credit the student's account only for any outstanding charges for tuition and fees and room and board for the award year incurred by the student while he or she was eligible.

(4) A student forfeits the rights to receive the payment if he or she does not pick up a payment by the end of the 15 day period.

(5) Notwithstanding paragraph (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up his or her payment, through the next payment period.

(Authority: 20 U.S.C. 1070a–32)

§ 691.79 Recovery of overpayments.

(a) (1) A student is liable for any PAS overpayment made to him or her.

(2) The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore those funds to the Secretary even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and

(2) If unsuccessful, providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(c) If an institution refers a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible for further title IV, HEA program assistance for attendance at any institution until the student repays the overpayment or the Secretary determines the overpayment has been resolved.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a–32)

§ 691.80 Recalculation of a PAS Program award.

(a) The institution shall recalculate a PAS award for the entire award year if the student's Federal Pell Grant changes at any time during the award year for any reason specified in § 690.80, including changes in enrollment status, EFC, or cost of attendance.

(b) The institution shall adjust the student's award when an overaward or underaward is caused by the change in the Federal Pell Grant award. That adjustment must be made—

(1) Within the same award year—if possible—to correct any overpayment or underpayment; or

(2) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(Authority: 20 U.S.C. 1070a–32)

§ 691.81 Fiscal control and fund accounting procedures.

(a) (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall account for the receipt and expenditure of PAS funds in accordance with generally accepted accounting principles.

(b) A separate bank account for PAS funds is not required. However, the institution shall notify any bank in which it deposits PAS funds of all accounts in that bank in which it deposits Federal funds.

(c) Except for funds received for administrative expenses, funds received by an institution under this part may be used only to pay PAS funds to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(Authority: 20 U.S.C. 1070a–32)

§ 691.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification) that include the fiscal and accounting records that are required under § 691.81, records required for audits in 34 CFR 668.23, the SAR or ISIR of each student receiving a PAS, and records indicating—

(1) The eligibility for a PAS of all enrolled students who have submitted valid SARs or valid ISIRs to the institution;

(2) The name and social security number of and the amount of the PAS award paid to each student;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) Each student's enrollment period; and

(6) Documentation of a student's eligibility for any part of a second Scheduled Federal Pell Grant award in any award year.

(b) Each institution shall retain any completed applications and any other documents submitted by a student to the institution under § 690.14(c) if the application information is transmitted to the Secretary under EDE.

(c) (1) The institution shall make the records listed in paragraph (a) of this section available for inspection by the Secretary's authorized representative at any reasonable time in the institution's offices. It shall keep the records for each award year for 5 years after that award year has ended.

(2) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(d) The institution shall keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(e) An institution may substitute microform copies or other media formats acceptable to the Secretary, as published in a notice in the **Federal Register**, in lieu of original records in meeting the requirements of this section.

(Authority: 20 U.S.C. 1070a–32)

§ 691.83 Submission of reports.

(a) (1) An institution may receive either a payment from the Secretary for an award to a PAS recipient or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable if—

(i) The institution submits to the Secretary all SAR Payment Documents (or the equivalent as defined by the Secretary) for that award in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the scholarship is made, and

(ii) The Secretary accepts those SAR Payment Documents.

(2) The Secretary accepts SAR Payment Documents that are submitted in accordance with procedures established through publication in the **Federal Register** and that contain information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive payment or reduction in accountability only as provided in paragraph (c) of this section.

(b) An institution shall report to the Secretary any change in enrollment status, cost of attendance, or other event or condition that causes a change in the amount of a Federal Pell Grant and a resulting change in a PAS for which a student qualifies by submitting to the Secretary an SAR Payment Document reporting a change to the Secretary by the end of that reporting period that next follows the reporting period in which the change occurred.

(c)(1) An institution that has timely submitted an SAR Payment Document for a student in accordance with paragraph (a) of this section but does not timely submit to the Secretary, or have accepted by the Secretary, an SAR Payment Document necessary to document the full amount of the PAS award to which the student is entitled may receive a payment or reduction in accountability in the full amount of that award if—

(i) A program review or an audit report produced in accordance with the standards prescribed in 34 CFR 668.23(c) demonstrated to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported on the SAR Payment Document timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an overpayment for that award that is at least $100.

(2) An institution that has timely submitted and has accepted an SAR Payment Document for a student in accordance with this section shall report a reduction in the amount of a PAS award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under § 690.79(a).

(3) The Secretary pays or recognizes a reduction in accountability under this paragraph after deducting the amount of any overpayments for which the institution is liable under § 691.79(a).

(d) In accordance with 34 CFR 668.84, the Secretary may impose a fine on the institution if the institution fails to comply with the requirements in paragraph (a), (b), or (c) of this section.

(e)(1) Notwithstanding paragraphs (a), (b), (c)(1) or (2), or (d) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided PAS Program scholarships in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraph (e) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report as initially submitted to the Department that was conducted after December 31, 1988 and timely submitted in accordance with 34 CFR 668.23(c), with respect to grants made during the period of that audit.

(3) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

(Authority: 20 U.S.C. 1070a–32, 1094, 1226a–1)

Subpart H—Administrative Responsibilities of a State

§ 691.90 Early-intervention agreement.

For a student to receive a PAS, the State agency in the State in which the student resides shall have entered into a one-time written agreement with the Secretary, except that a State must submit a subsequent agreement if the Secretary subsequently requires changes in this initial agreement. Each State's agreement must be approved by the Secretary and must include provisions designed to ensure the following:

(a) All secondary school students in the State have equal and easy access to the coursework described in § 691.16(c) and 406C(a)(2) of the HEA.

(b) The State agency has procedures in place to verify to the Secretary that—

(1) A student receiving a PAS has taken the coursework described in § 691.16(c);

(2) The coursework described in § 691.16 is of a college preparatory level; and

(3) The State requires all secondary schools in the State to issue a certificate to each eligible student certifying that the student has completed the necessary coursework to qualify for a PAS.

(c) The State agency has procedures in place to notify institutions of higher education of the availability of the PAS so that the institutions may award additional scholarships in concert with the PAS. The State agency has procedures to inform junior high school students enrolled in public or private schools and their families about—

(1) The value of postsecondary education;

(2) The availability of student aid to meet college expenses; and

(3) The availability of a PAS for students from low- and moderate-income families who take academically demanding courses.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority 20 U.S.C. 1070a–36)

§ 691.91 Records a State must maintain.

(a) The State agency shall maintain written procedures and records to support the information supplied in the early-intervention agreement in § 691.90 and the Governor's certification of other eligible early intervention programs.

(b) The State agency shall maintain the written procedures and records required under this subpart for a period of five calendar years from the end of the award year to which the records relate.

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(Authority: U.S.C. 1070a–36)

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Part IV

Environmental Protection Agency

40 CFR Part 763
Asbestos Worker Protection; Asbestos-Containing Materials in Schools; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPPTS–62125; FRL–3801–3]

RIN: 2070–AC66

Asbestos Worker Protection; Asbestos-Containing Materials in Schools; Proposed Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Asbestos Abatement Projects; Worker Protection Rule (EPA WPR), by incorporating revised Occupational Safety and Health Administration (OSHA) asbestos workplace standards issued since the EPA WPR was promulgated in 1987. The proposed rule would generally extend the coverage provided under the 1986 OSHA Asbestos Standard for Construction to State and local government employees who are not covered by OSHA- or EPA-approved State plans. (The EPA WPR now applies solely to asbestos abatement projects). EPA also proposes to extend coverage provided under the OSHA Asbestos Standard for General Industry for automotive brake and clutch repair. The proposed revisions to the EPA WPR do not include final amendments to the OSHA asbestos standards published in the **Federal Register** of August 10, 1994. EPA intends to expedite additional rulemaking that would extend provisions of the new amendments to the OSHA asbestos standards as they apply to the public sector worker population covered by the EPA WPR. The proposed rule would also clarify that State and local government employees include prisoners and students employed in State and local government construction, or vehicular maintenance work where asbestos exposure may be encountered in the workplace. EPA also proposes to delegate authority to grant or deny State exclusions under the WPR to EPA Regional Administrators, and to add compliance and enforcement requirements for State exclusions. In addition, EPA is proposing to amend the Asbestos-Containing Materials in Schools Rule (Asbestos in Schools Rule), issued under Title II of the Toxic Substances Control Act (TSCA), the Asbestos Hazard Emergency Response Act (AHERA), by deleting certain worker protection provisions extended through the Asbestos in Schools Rule, under the EPA WPR, and by incorporating all worker protection provisions in the EPA WPR.

DATES: Written comments must be received by EPA no later than January 3, 1995. If a person requests time for oral comment by January 3, 1995, EPA will hold an informal hearing in Washington, DC. If a hearing is requested, the exact time and location of the hearing will be published in the **Federal Register.**

ADDRESSES: Comments should be submitted in triplicate to: TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460, Attention: OPPTS–62125.

Comments containing confidential business information (CBI) should be submitted in triplicate to: TSCA Document Receipt (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, E–G99, 401 M St., SW., Washington, DC 20460, Attention: OPPTS–62125. A sanitized copy of comments for which confidentiality claims are made must be provided in triplicate to the TSCA Nonconfidential Information Center (NCIC), also know as, the TSCA Public Docket Office. Unit XIV of this preamble contains additional information about CBI claims.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: 202–554–0551.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 6(a) of TSCA authorizes EPA to regulate a chemical substance or mixture if EPA finds that the manufacturing, processing, distribution in commerce, use, or disposal of the substance or mixture, or any combination of these activities, presents, or will present, an unreasonable risk of injury to health or the environment. Among the requirements that EPA may impose are those in section 6(a)(5) and 6(a)(6). Section 6(a)(5) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of commercial use of a chemical substance or mixture. Section 6(a)(6) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of disposal of a chemical substance or mixture, or any article containing that substance or mixture, by any person who uses or disposes of it for commercial purposes.

The asbestos present in public buildings, or in vehicles or other products owned and maintained in public buildings, was sold as a commercial product. Therefore, construction work or brake repair is commercial activity, subject to section 6(a)(5) of TSCA. The removal of asbestos is considered disposal for commercial purposes subject to section 6(a)(6).

Section 203 of TSCA (TSCA Title II, AHERA), requires EPA to promulgate regulations for inspection of, and appropriate response to, asbestos-containing materials in schools that are under the authority of local educational agencies.

Sections 6 and 203 of TSCA authorize EPA to promulgate regulations to protect State and local government employees who engage in asbestos work activities who are not otherwise covered under OSHA's Asbestos Standard for the Construction Industry (29 CFR 1926.58), OSHA's Asbestos Standard for General Industry (20 CFR 1910.1001), or OSHA-approved State plans that implement OSHA regulations.

II. Background

In 1987, EPA promulgated the Asbestos Abatement Projects; Worker Protection Rule (EPA WPR), which extended to State and local government employees engaged in asbestos abatement projects the provisions of the revised OSHA Asbestos Standard for Construction. The 1987 WPR, which replaced the 1986 WPR, provided additional coverage to State and local government abatement workers by incorporating the revised asbestos workplace standard permissible exposure limit (PEL) of 0.2 fibers/cubic centimeters of air (0.2 f/cc), averaged over an 8–hour day, among other revisions.

In the 1987 WPR, EPA retained, in §§ 763.120, 763.124, 763.125, and 763.126, the same language concerning the scope of the WPR, reporting requirements, enforcement, and inspections as in the 1986 WPR. However, in the 1987 WPR, EPA replaced § 763.121 of the 1986 WPR and established new requirements for the protection of State and local government asbestos abatement workers, and in § 763.122, provisions for States to be excluded from the WPR if States had regulations that are at least as stringent as the WPR.

The OSHA Asbestos Standards were challenged in a lawsuit in 1987. In 1988, the U.S. Court of Appeals for the District of Columbia upheld the OSHA standard in most respects, but remanded several issues (*BCTD, AFL-CIO v. Brock*, 838 F.2d 1258 (D.C. Cir., 1988)). In partial

response, on September 14, 1988 (53 FR 35629), OSHA issued an amendment which established a short-term exposure (or excursion) limit and other minor changes. On December 20, 1989 (54 FR 52024), OSHA issued an amendment to the Asbestos Standard in response to three of the Court remand issues that: (1) Rescinded OSHA's ban on the spraying of asbestos; (2) clarified when construction employers must resume periodic monitoring; and (3) deferred clarification of the small-scale, short-duration exemption in the construction industry to a later rulemaking.

On February 5, 1990 (55 FR 3724), OSHA issued another amendment to the OSHA Asbestos Standards in response to the second group of court remand issues that: (1) Expanded its ban on workplace smoking and increased training requirements covering the availability of smoking control programs; (2) strengthened warning signs and label requirements; and (3) explained how and why OSHA's respirator requirements reduced employee risk below that remaining at the PEL. OSHA has published a proposed rule (55 FR 29712, July 20, 1990) to address the remaining remand issues.

III. Relationship of the EPA WPR to the OSHA Asbestos Standard for Construction

EPA first issued its Worker Protection Rule in 1986 to apply to asbestos abatement projects using State and local government employees not covered by the OSHA Asbestos Standard for Construction or by OSHA-approved State plans. The EPA WPR was revised in 1987, generally incorporating and applying provisions of the 1986 OSHA Asbestos Standard for Construction to State and local government employees engaged in asbestos abatement projects.

However, the 1987 EPA WPR differs from the OSHA Asbestos Standard for Construction in several areas, discussed in this unit and in unit V. of this preamble, as a result of EPA's more limited scope of coverage and/or EPA's own assessment of the relative merits of various methods for controlling hazards to workers.

OSHA's 1986 Asbestos Standard for Construction applies generally to all "construction work" where asbestos is present, as defined under 29 CFR 1910.12(b) and 1926.58(a). In contrast, EPA's 1987 WPR applies only to asbestos abatement projects using State and local government employees who are not otherwise covered by the OSHA Asbestos Standard for Construction, or under OSHA- or EPA-approved State plans. Unlike the OSHA Asbestos Standard for Construction, the 1987 EPA WPR defines "asbestos abatement projects" as any activity involving the removal, enclosure, or encapsulation of friable asbestos material. The activities included in the definition of "asbestos abatement projects" are a subset of the definition of "construction work" in the OSHA Asbestos Standard for Construction.

The 1987 EPA WPR also differs from OSHA's Asbestos Standard for Construction in retaining the 1986 reporting requirements for asbestos abatement projects covered by this proposed rule. Under § 763.124, employers, with certain exceptions, must notify EPA that they intend to undertake an asbestos abatement project covered by the rule at least 10 days before they begin abatement, except one that involves less than either 3 linear or 3 square feet of friable asbestos material, or an emergency project. EPA considers these requirements necessary to monitor compliance with the general provisions of the rule. OSHA has proposed certain notification requirements under its proposed revision to the Asbestos Standard for Construction (55 FR 29712, July 20, 1990). The revisions would require a notification, comparable to that presently required under the EPA WPR, by any employer planning to perform any work covered by the OSHA Asbestos Standard for Construction.

The definition of "asbestos" in the 1986 EPA WPR, and retained in the 1987 WPR, differs from that defined in the OSHA asbestos standard. The definition of "asbestos" in the OSHA standard does not distinguish between the asbestiform and nonasbestiform varieties of minerals. The definition in the EPA WPR applies only to the asbestiform varieties of the asbestos minerals and is consistent with definitions of asbestos adopted by EPA in other regulations, including an Advance Notice of Proposed Rulemaking (ANPR), published in the **Federal Register** of October 17, 1979 (44 FR 60061), Notice of Proposed Rulemaking, published January 29, 1986 (51 FR 3738), and in the Final Rule, published July 12, 1989 (54 FR 29460), Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions.

The 1987 WPR also differs from the OSHA Asbestos Standard for Construction (29 CFR 1926.58), in that several appendices to the OSHA standard were omitted.

The proposed revisions to the EPA WPR do not include final amendments to the OSHA asbestos standards published in the **Federal Register** of August 10, 1994 (59 FR 40963). EPA intends to expedite additional rulemaking to extend provisions of the new amendments to the OSHA asbestos standards that would be applicable to the public sector worker population covered by the EPA WPR.

IV. Relationship of the Asbestos in Schools Rule to the EPA WPR

The current (1987) EPA WPR covers State and local government employees, including employees of public schools, who are involved in asbestos abatement projects (40 CFR 763.121(b)). The Asbestos in Schools Rule, issued under the authority of AHERA, extends coverage of the WPR to employees of public school systems when they are performing operations, maintenance and repair (O&M) activities (40 CFR 763.91 (b)). Private school employees, performing asbestos abatement and O&M work are covered by OSHA's Asbestos Standard for Construction, as are other private sector employees.

Since public school employees would be covered directly under the EPA WPR, as well as all other public sector employees, Appendix B to Subpart E of the Asbestos in Schools Rule (40 CFR 763.80) would be moved from Subpart E and incorporated in the WPR as Appendix G to Subpart G. Appendix B to Subpart E is comparable to Appendix G of the OSHA Asbestos Standard for Construction (Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation and Maintenance Activities - Non-mandatory).

V. Extended Training Requirements of the Asbestos Model Accreditation Plan (MAP) Under the Asbestos School Hazard Abatement Reauthorization Act of 1990 (ASHARA)

AHERA required States to adopt, through an EPA-established Model Accreditation Plan (MAP), minimum training requirements for persons performing asbestos inspections, preparing management plans, designing asbestos abatement plans, or conducting asbestos abatement projects in schools. The Asbestos School Hazard Abatement Reauthorization Act of 1990, (ASHARA), amended AHERA to require EPA to revise the MAP, expand the scope of training, and extend certain of the training and accreditation requirements that apply to schools to public and commercial buildings. This requirement took effect on November 28, 1992. Thus, some State and local government employees covered by the EPA WPR for abatement projects currently need training specified by the MAP.

In order to avoid duplication of training, EPA will consider MAP contractor/supervisor accreditation sufficient to meet the training requirements for competent persons specified in § 763.121(e)(6)(iii) of the regulatory text, and MAP worker training sufficient for compliance with the employee training requirements specified in § 763.121(k)(3).

Interested parties are encouraged to consult the **Federal Register** of February 3, 1994 (59 FR 5236), or EPA Docket OPPTS–62107A, for more information on the expansion of asbestos MAP training and accreditation requirements to workers in public and commercial buildings.

VI. Proposed Amendments to 1987 EPA WPR

This unit of the Preamble discusses proposed revisions to the 1987 EPA WPR. The major changes include:

- Adopting provisions from the current OSHA Asbestos Standards to add an excursion limit to regulate short-term exposure to asbestos, delete the ban on spray application of asbestos-containing materials, expand the regulation of smoking activities, and provide information about smoking cessation programs.
- Deleting exemptions from initial air monitoring and labeling based upon certain conditions.
- Expanding covered work activities from asbestos abatement work to construction work and to brake and clutch repair workers.
- Adding appendices to govern work practices for construction and brake and clutch repair work.
- Correcting the scope of the exemption triggers associated with small-scale, short duration operations.
- Delegating authority and modifying procedures for approving State plans governing asbestos worker protection.

Each of these proposed changes is discussed in detail in unit A. below.

A. Incorporation of Additional Provisions Under the OSHA Asbestos Standard for Construction

This proposed amendment to the EPA WPR would add the same Excursion Limit of 1.0 fibers per cubic centimeter of air (f/cc) (averaged over a sampling period of 30 minutes) as issued under the OSHA PELs for occupational exposure to asbestos in the Asbestos Standard for General Industry (29 CFR 1910.1001) and in the Asbestos Standard for Construction (29 CFR 1926.58). The excursion limit will be codified in a new paragraph (c)(2), *Excursion Limit*, under § 763.121(c), "Permissible Exposure Limits (PELs)."

Requirements would be added in § 763.121 in the following paragraphs when concentrations of asbestos exceed the excursion limit: § 763.121 (e) Regulated Areas, (f) Exposure Monitoring, (g) Methods of Compliance, (h) Respiratory Protection, (i) Protective Clothing, (j) Hygiene Facilities and Practices, (k) Communication of Hazards to Employees, (m) Medical Surveillance, and (n) Recordkeeping.

In addition, as consistent with the changes adopted by OSHA (54 FR 52024, December 20, 1989), this proposed amendment would clarify "resumption of monitoring requirements in the construction industry" and add a new provision for "additional monitoring" under § 763.121(f).

Section 763.121(e)(6)(iii)(A) would be revised to state that training shall be provided by an EPA- or State- approved training provider, or an equivalent course.

Section 763.121(g)(2) *Prohibitions* would be amended by deleting paragraph (iii) prohibiting the spray application of asbestos-containing materials. In its 1986 Asbestos Standard, OSHA banned the spray application of asbestos-containing products (29 CFR 1910.1001(f)(1)(vii) and 1926.58(g)(2)(iii)). This provision, however, was remanded to OSHA by the D.C. Circuit Court on October 30, 1989. OSHA subsequently amended the regulatory text of the 1986 standard by deleting the prohibition on the spray application of asbestos-containing products (54 FR 52024, December 20, 1989). Based on the rulemaking record of the 1986 standard, OSHA concluded that deleting this prohibition would not significantly increase the risk to workers. The PEL and excursion limit in the rule apply to all asbestos operations, including spraying.

In addition, certain spray applications of asbestos-containing materials are regulated under the EPA National Emission Standard for Hazardous Air Pollutants (NESHAP). The asbestos NESHAP, which was issued on April 6, 1973, prohibits the spray application of materials that contain more than 1 percent asbestos on buildings, structures, pipes, and conduits (40 CFR 61.146 (a)). Paragraph 61.146 (b) of the standard requires no visible emissions from spray application of materials that contain more than 1 percent asbestos on equipment and machinery.

Under § 763.121(j) *Hygiene Facilities and Practices*, paragraph (j)(3) *Smoking in work areas* would be added which prohibits smoking in work areas where workers are occupationally exposed to asbestos because of activities in that work area (55 FR 3724, February 5, 1990).

Under § 763.121(k) *Communication of hazards*, requirements would be added to provide information about smoking cessation programs and materials. Under § 763.121(m), a statement would be required that the employee has been informed by a physician of the increased risk of lung cancer attributable to the combined effect of smoking and asbestos exposure.

Subpart G would be amended to incorporate a new Appendix J - "Smoking Cessation Program Information for Asbestos Non-Mandatory." Appendix J was added to 29 CFR 1926.58 - OSHA's Asbestos Standards for General Industry and for Construction - in the February 5, 1990 (55 FR 3724) amendment to the rule.

B. Proposed Deletion of Certain Exemptions From Initial Monitoring and Label Requirements

Sections 763.121 of the WPR and 1926.58 of the OSHA Asbestos Standard for Construction, paragraphs (f)(2) *Initial Monitoring* and (k)(2) *Labels*, provide for certain exemptions from initial monitoring and label requirements. EPA is considering deleting certain of these exemptions.

Section 763.121(f)(2)(i) specifies that each employer who has a workplace or work operation covered by this subpart, except as provided for in paragraphs (f)(2)(ii) and (iii), shall perform initial monitoring at the initiation of each asbestos job to determine accurately the airborne concentrations of asbestos to which employees may be exposed.

Section 763.121(f)(2)(ii) exempts an employer from initial monitoring requirements *provided that* the employer may demonstrate that employee exposures are below the action level by means of objective data demonstrating that the product or material containing asbestos cannot release airborne fibers in concentrations exceeding the action level under those work conditions having the greatest potential for releasing asbestos. EPA is considering whether to delete this exemption and seeks comment on whether this exemption should be retained or deleted.

EPA is not aware of objective criteria and therefore seeks comments on criteria that would be needed to demonstrate a product will not release asbestos fibers in excess of the action level under any reasonably foreseeable conditions of use, handling, storage, disposal, processing, or transportation. The lack of criteria to determine what constitutes "objective data," such as testing requirements, by a manufacturer

to demonstrate low fiber release potential from a product that will not exceed the action level, makes it more difficult to enforce this provision.

In any case, EPA would retain § 763.121(f)(2)(iii) which exempts employers from initial monitoring requirements of paragraph (f)(2)(1) based upon earlier monitoring results. This exemption is available if the employer has data from monitoring previous asbestos jobs that closely resemble the current operation. EPA believes that this exemption, provides more direct guidance to the regulated community, and provides more reliable data for the purposes of compliance with the provisions of the exemption.

Under the WPR, § 763.121(k)(2)(vi)(A) and (k)(2)(vi)(B), employers are exempt from the label requirements specified in paragraph (k)(2)(i), provided that manufacturers can demonstrate that, during any reasonably foreseeable use, handling, storage, disposal, processing, or transport, no airborne concentrations of asbestos fibers in excess of the action level will be released, or that asbestos is present in a product or material in concentrations less than 0.1 percent by weight.

EPA is considering whether to delete the exemption provisions at §§ 763.121(k)(2)(vi)(A) and (k)(2)(vi)(B) and seeks public comments on this proposal. EPA believes that exemption from requirements for labeling by manufacturers may lead State and local government employers subject to the rule to mistakenly assume that the material is incapable of releasing asbestos fibers and that initiation of workplace monitoring for asbestos exposure is unnecessary. If the product is not properly labeled, there is an increased risk that the asbestos-containing material may not be handled in accordance with prescribed work practices for operation and maintenance and other related asbestos work activities.

If EPA deletes the exemptions at § 763.121(f)(2)(ii) and § 763.121(k)(2)(vi)(A) and (k)(2)(vi)(B), the requirement under § 763.121(n)(1)(i) through (n)(1)(iii), recordkeeping of objective data for exempted operations, would also be deleted. However, employers would, under § 763.121(n)(2)(i) through (n)(2)(iii), continue to be required to retain accurate records of the data from earlier monitored jobs that the employer relied on for exemption.

C. Extended Scope of Coverage

The EPA WPR presently applies solely to asbestos abatement projects. The proposed amendment to the WPR would, under § 763.120(a), extend the scope of coverage to all asbestos "construction work," as defined under the OSHA Asbestos Standard for Construction, 29 CFR 1910.12(b). "Construction work" includes work for construction, alteration and/or repair, including painting and decorating, as specified in 29 CFR 1926.58(a). "Construction work," as defined in 29 CFR 1910.12(b) includes, but is not limited to, (1) Demolition or salvage of structures where asbestos is present; (2) removal or encapsulation of materials containing asbestos; (3) construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof, that contain asbestos; (4) installation of products containing asbestos; (5) asbestos spill/emergency cleanup; and (6) transportation, disposal, storage, or containment of asbestos on the site or location at which construction activities are performed.

Section 763.120 would be amended by revising paragraph (a), and by adding paragraphs (b), (c), and (d). Section 763.120(a) would establish requirements that State and local government employers subject to the EPA WPR must follow to protect employees during construction work where asbestos is present and during automotive brake and clutch repair and service operations. Section 763.120(b) would establish work practices and controls that employers may follow in special circumstances as an alternative to complying with all the requirements of § 763.121. Appendices F and G contain alternative practices and controls for certain types of construction work. Appendix K contains alternatives for brake and clutch work. These alternatives are designed to achieve employee exposure to asbestos below the action level of 0.1 f/cc. If an employer utilizes the work practices and controls as specified in the appropriate appendix, and achieves an exposure below the action level, then the employer would be able to avoid the regulatory burdens under § 763.121 that are triggered by exposures to asbestos that exceed the rule's action level or PEL. Section 763.120(c) specifies applicability under the EPA WPR. Section 763.120(d) extends protections established in this part to all State and local government employees, including employees who are prisoners or students, of all State and local governments subject to the EPA WPR.

In light of the proposed extended scope of coverage under the WPR, § 763.121(b) *Definitions* would be amended by adding definitions for "automotive brake repair operations," as defined in the OSHA Asbestos Standard for General Industry (29 CFR 1910.1001), and "construction work," as defined in the OSHA Asbestos Standard for Construction (29 CFR 1910.12(b) and specified in 29 CFR 1926.58(a)). The definition for "asbestos abatement project" would be deleted, since asbestos abatement activities are incorporated within the definition of "construction work." The definition of "friable asbestos material" would also be deleted from the EPA WPR because the scope of coverage would be expanded to cover all asbestos construction activities involving all asbestos-containing materials and would not be limited to abatement work involving "removal, enclosure, or encapsulation of friable asbestos material." Removal of friable asbestos-containing material also would be deleted from the definition of "emergency project."

D. Incorporation of Appendix F to 29 CFR 1910.1001 the OSHA Asbestos Standard for General Industry—as Appendix K to Subpart G

The 1986 OSHA Asbestos Standard for General Industry regulates brake and clutch repair operations under 29 CFR 1910.1001 and Appendix F to the standard. EPA would extend the same protections by incorporating them into the regulatory requirements of § 763.121 and Appendix K.

Workplace practices specified in proposed Appendix K to the EPA WPR are intended as employer guidance for reducing employee exposures to asbestos during automotive brake and clutch repair operations to levels below the action level of 0.1 fiber per cubic centimeter (0.1 f/cc) of air. Employers who follow the recommended work practices in Appendix K and who achieve employee workplace exposures below the action level, would be able to avoid the burden that might be imposed by complying with such requirements as medical surveillance, recordkeeping, training, respiratory protection, and regulated areas, that are triggered when employee exposures exceed the action level or PEL.

E. Incorporation of Appendices F, H, I, and J to 29 CFR 1926.58 of the OSHA Asbestos Standard for the Construction Industry in Subpart G

The following appendices to the OSHA Asbestos Standard for Construction would be incorporated in subpart G as Appendices F, H, I and J: Appendix F (Work Practices and Engineering Controls for Major Asbestos Removal, Renovation, and Demolition Operators - Non-Mandatory), Appendix H (Substance Technical Information for

Asbestos, Non-Mandatory), Appendix I (Medical Surveillance Guidelines for Asbestos, Non-Mandatory), and Appendix J (Smoking Cessation Program Information for Asbestos - Non-Mandatory).

Minor revisions would be made to current Appendices A, B, C, D, and E to the EPA WPR and to new Appendices H and I to the EPA WPR. New Appendix F to the EPA WPR, which is comparable to Appendix F to the OSHA Asbestos Standard for Construction, would include several revisions. The paragraphs which describe work practices would be re-ordered. Figures depicting equipment and diagrams would also be deleted, and Demolition and Clearance checklists would be relabeled as Tables A and B. In addition, procedures outlined in the section, Cleaning the Work Area, under Appendix F, would be revised to conform to the procedures for cleaning the work area contained in Appendix A to part 763, subpart E, of the Asbestos in Schools Rule.

F. Incorporation of Appendix B to Subpart E as Appendix G to Subpart G of the EPA WPR

This proposed amendment would delete Appendix B from the Asbestos in Schools Rule and incorporate it, with minor changes, in the EPA WPR as Appendix G to Subpart G, because public school employees would now be covered directly under the EPA WPR for all "construction work," as defined in the OSHA Asbestos Standard for Construction. This Appendix is comparable to Appendix G to 29 CFR 1926.58 - the OSHA Asbestos Standard for Construction.

Since the EPA WPR would extend coverage to all public sector employees (not just public school employees) engaged in small-scale, short-duration operations involving asbestos, Appendix G provides, in one place, provisions that all public sector employers subject to the EPA WPR, including local education agency employers, shall comply with if they wish to be exempt from the negative-pressure enclosure, competent person, clearance, and decontamination area requirements, specified in § 763.121(e)(6), (j)(1)(i)(B), and (j)(2)(i) for small-scale, short-duration operations. Based on the OSHA record, the use of the work practices and engineering controls described in Appendix G are capable of reducing employee exposures to asbestos to levels below the rule's action level of 0.1 f/cc for workers engaged in small-scale, short-duration activities.

Finally, EPA proposes several minor revisions to the Appendix: (1) Language referring specifically to the Asbestos in Schools Rule would be deleted because the Appendix would apply to all construction work in public sector workplaces, not just to work in schools; and (2) language exempting employers from compliance with § 763.121(f)(2)(i) for small-scale, short-duration operations would be revised to correct a transcription error in the original Appendix B to the Asbestos in Schools Rule. When Appendix B was printed, the letter "f" was inadvertently substituted for "j", thus modifying the applicability of the exemption. The proposal would remove the incorrect reference to paragraph (f), and exempt employers that complied with the provisions of the proposed Appendix G from certain hygiene facility and practices requirements in § 763.121(j)(1)(i)(B) and (j)(2)(i).

VII. Proposed Amendment to the Asbestos in Schools Rule

EPA is proposing to amend the Asbestos in Schools Rule by deleting § 763.91(b) which extends coverage of the EPA WPR to employees of local education agencies who perform operations, maintenance and repair (O&M) activities. The Asbestos in Schools Rule would also be amended by deleting Appendix B and incorporating it as Appendix G to the EPA WPR.

Since the proposesd EPA WPR would provide coverage for all construction work directly to employees of local education agencies, extension of coverage through § 763.91(b) would no longer be necessary. Section 763.91 (b) would refer readers to the WPR.

VIII. Exclusions for States

Section 763.122 - *Exclusions for States* - would also be amended to delegate authority from the EPA Administrator to the EPA Regional Administrators the authority to grant or deny State exclusions from the EPA WPR. In addition, the criteria for granting State exclusions would be expanded to require State Compliance and Enforcement Plans, and to clarify that EPA can rescind exclusions to States when State plans lack enforcement provisions.

States that currently have EPA-approved State Worker Protection Plans would have 6 months, or such other reasonable time as suggested by the particular State and approved by the applicable Regional Administrators, to make their regulations comparable to or more stringent than this revised part, and to submit their regulations to the appropriate EPA Regional Administrator for review. If States do not revise their regulations and submit them to EPA within such reasonable time after promulgation of the rule, State and local government employees in such States shall automatically be covered by the revised EPA WPR.

IX. Future Revisions to this Proposed Rule and Exclusions for States

EPA may make future amendments to the EPA WPR in order to apply coverage provided in future revisions to the OSHA Standards, or as other issues are identified by EPA.

X. Reporting

The present EPA WPR requires that employers must notify EPA at least 10 days before they commence any asbestos abatement project which involves greater than 3 linear feet, or 3 square feet of friable asbestos material. As proposed, employers would be required to notify EPA before they begin any "asbestos construction work" of 3 linear feet or greater, or 3 square feet or greater. The scope of required reporting would reflect the expanded scope of coverage under the WPR and would require reporting of all "construction work" where asbestos is present, except exempted small-scale operations or emergency projects, rather than the present reporting requirements limited to asbestos abatement projects.

XI. Regulatory Assessment

TSCA requires EPA to consider and publish a statement with respect to the effects on human health and the environment and the magnitude of exposure (section 6(c)(1)(B)). In developing the 1986 WPR and revised 1987 EPA WPR, EPA considered the requirements imposed by section 6(c)(1) of TSCA in order to determine whether asbestos exposure presents an unreasonable risk. Specifically, it considered the effects of asbestos on health and the environment. It also considered the benefits of the substance and the availability of substitutes and the reasonably ascertainable economic consequences of the EPA WPR. EPA incorporates the regulatory assessments made for the previous EPA WPR (51 FR 15724 and 52 FR 5618) and assesses in this document only the incremental changes introduced by this rule.

A. Health Effects and Magnitude of Exposure to Asbestos

1. *Health effects.* EPA classifies asbestos as a Group A carcinogen, i.e., a human carcinogen (sufficient evidence in human epidemiological studies supported by evidence of carcinogenic effects in several animal species).

(USEPA/ORD Airborne Asbestos Health Assessment Update, EPA/600/884/003F, June 1986. See also, USEPA/ORD: The Risk Assessment Guidelines of 1986, EPA/600/8-87/045, August 1987), the Annual Report on Carcinogens, National Toxicology Program, U.S. Department of Health and Human Services.)

In the preamble to the 1986 WPR (51 FR 15722, April 25, 1986), EPA reviewed the serious adverse human health effects associated with the use of asbestos, and incorporated that analysis in the 1987 WPR. This proposed rule incorporates that analysis and supporting documentation as well. The studies reviewed and incorporated in the 1986 WPR Docket (Docket No. OPPTS–62044A) include the "Report to the U.S. Consumer Product Safety Commission" (CPSC) by the Chronic Hazard Advisory Panel on Asbestos, "Health Effects and Magnitude of Exposure" in EPA's "Support Document for Final Rule of Friable Asbestos-Containing Materials in School Buildings," and the "Report of the National Research Council Committee on Nonoccupational Health Risks of Asbestiform Fibers."

EPA finds that exposure to asbestos poses risk of adverse health effects. The effects of asbestos exposure have been examined in numerous human epidemiology studies and animal studies. Diseases associated with exposure to asbestos that have been identified include lung cancer, mesothelioma, gastrointestinal cancer, and cancers of other organs, as well as asbestosis, a disabling fibrotic lung disease. A detailed discussion of specific diseases associated with asbestos exposure, the estimated exposure to workers, and cancer risk extrapolation, is found in the preamble to the 1986 EPA WPR.

2. *Magnitude of exposure.* The current (1987) EPA WPR covers State and local government employees in the 27 States that do not have OSHA-approved State plans who are engaged in asbestos abatement projects only. The proposed WPR would expand the scope of coverage to include all construction and brake repair work where asbestos is encountered in public sector workplaces by State and local government employees in those States covered by the EPA WPR.

In the 1986 WPR, EPA estimated that asbestos abatement workers would be exposed to asbestos during abatement work, that other State and local public employees, including public school employees, public hospital staff, and State and local government office workers, would be exposed during abatement, and that other occupants and visitors would be exposed after abatement. These estimates are contained in the EPA support document for the 1986 Rule - "Asbestos Abatement Rules: A Preliminary Cost-Effectiveness Analysis. Revised Draft Report May, 1986" (Docket No. OPPTS-62044A). EPA found that the risk to State and local government abatement workers would be reduced by the protection provided by the WPR (51 FR 15722, April 25, 1986).

In the 1987 EPA WPR, EPA found that the revised rule would further reduce risk to public sector asbestos abatement workers because of the reduction in the PEL from 2.0 f/cc to 0.2 f/cc, and because of the requirement for additional work practices and protective equipment. (52 FR 5619, February 25, 1987).

The incremental impact of this proposed rule is presented in the Regulatory Impact Analysis (RIA) proposed for this rule (Asbestos Worker Protection Rule Regulatory Impact Analysis, Revised Draft Report. July 23, 1993. Contract #68–D2–0064). In the RIA, the number of State and local government employees engaged in construction work and brake and clutch repair in the 27 States that would be covered by the extended scope of coverage of this proposed rule is based on estimated "full-time equivalents" (FTEs) rather than actual numbers of employees. For example, two workers exposed to asbestos in their work activities one-half year each would total one FTE. The RIA assumes that public sector workers are not engaged in asbestos-related construction work and brake repair on a full-time basis and, thus, are not exposed to asbestos full-time in the workplace.

EPA examined three kinds of worker exposures: (1) Those associated with building maintenance work, (2) those associated with building renovation work, and (3) those associated with brake and clutch repair work. To simplify the construction sector analysis, EPA grouped several maintenance tasks together. Tasks involving work on lighting, heating ventilation, and air-conditioning systems were combined in this way, as were boiler/furnace repair and plumbing repair. Exposure estimates for these tasks were also grouped together.

To estimate the magnitude of exposure to employees affected by this proposed rule, EPA first estimated the number of buildings and motor vehicles owned by State and local governments in those 27 States without OSHA-approved State plans. EPA then estimated the frequency with which various kinds of projects involving asbestos exposure would be conducted, and the person-hours required per project. Finally, for construction work, EPA used these estimates of the number of projects and person-hours needed per project to estimate the number of FTEs associated with each type of project in buildings owned by State and local governments on an annual basis in the States covered by the EPA WPR. For brake and clutch repair, EPA derived the estimated number of public sector brake and clutch repair workers affected by using the following assumption. The ratio which exists between the number of workers exposed in automobile repair nationwide (b) and the number of private brake and clutch repairs performed (c) was assumed to be the same as the ratio between the number of public sector brake and clutch repair workers (x) and the number of brake and clutch repairs performed on government vehicles (a): $(x/a = b/c)$.

The estimated number of FTE's in the 27 States that would be covered by the proposed EPA WPR are: 1,227 to 1,910 FTEs for maintenance activities, 2,022 FTEs for renovation work, and 9,692 FTEs for brake and clutch repair.

Because public sector workers in the 27 states without OSHA-approved state plans are not covered under existing regulations, monitoring data are not available on the exposure levels for this specific worker population under unregulated conditions. For this analysis, therefore, EPA assumes that the individual baseline asbestos exposure levels for state and local government employees are those estimated by OSHA in 1986 for private-sector workers conducting the same kinds of work under OSHA's 1986 2.0 f/cc PEL. OSHA's estimates are based on a variety of sources but rely principally on personal exposure monitoring data from OSHA's Integrated Management Information System (IMIS) and on sampling conducted for OSHA under contract.

Because public sector worker exposure to asbestos in the states covered by the EPA WPR is not controlled under existing regulations for construction work, other than abatement work, or for brake and clutch repair, actual exposures may exceed the level estimated in the RIA for this proposed rule. EPA assumes that present, unregulated, exposure levels exceed the PEL proposed in this document. In that case, state and local employers would be required to comply with the work practices proposed in the amendments to the EPA WPR once the rule is issued in order to reduce employee exposures to below the PEL and action level. The rule's benefits would result from the use

of the work practices required by this proposed rule, which would reduce exposure levels below the proposed PEL to the levels indicated in the next paragraph. Although EPA believes exposures are higher, the benefits are measured only for the incremental decrease in exposure from the exposure levels estimated by OSHA in its 1986 asbestos standard, and not for the full reduction from present, unregulated, exposure levels. Accordingly, the true magnitude of exposure is not reflected in the benefits, which are, therefore, understated.

The baseline exposure levels estimated by OSHA in 1986 and used in this proposed rule to calculate benefits are as follows. Baseline exposure levels for maintenance work are estimated to range from 0.02 f/cc for flooring repair to 0.75 f/cc for drywall repair. Exposure levels for maintenance work under this proposed rule would range from 0.001 f/cc to 0.02 f/cc. Baseline exposure levels for renovation work range from 0.12 f/cc for built-up roofing to 0.34 f/cc for drywall demolition. Exposure levels for renovation work under this proposed rule would range from 0.0012 f/cc to 0.034 f/cc. The baseline exposure level for brake and clutch repair work is 0.06 f/cc, and exposures would be reduced to 0.015 f/cc by following the work practices in this proposed rule.

B. Benefits of Asbestos Products and Availability of Substitutes

EPA has considered both the benefits of asbestos for the uses regulated by the proposed rule and the availability of substitutes for those uses. EPA has concluded that the benefits of asbestos for such uses are minimal, and that there are substitutes available for those uses.

When EPA first promulgated the WPR in 1986, and later amended it in 1987, it concluded that the benefits of asbestos-containing products affected by the rule were minimal (51 FR 15722, April 25, 1986 and 52 FR 5618, February 25, 1987). EPA noted that the 1986 and 1987 rules applied only to asbestos abatement projects where persons had already decided to remove, enclose, or encapsulate friable asbestos-containing material (ACM). In such situations, EPA presumed that the persons had already determined that there were little or no benefits in using the ACM in its present condition.

EPA continues to believe that the proposed regulation would have little or no impact on any benefits associated with the uses of asbestos that are affected by the proposed revisions to the WPR. This is particularly true where the provisions concern work associated with the removal, enclosure, or encapsultation of ACM. Persons directing those activities presumably have decided that there are no benefits to continued use of the asbestos. The same reasoning applies to most other construction activities that would be governed by the resided WPR such as demolition and asbestos spill or emergency cleanup, as well as the transportation, disposal, storage, or containment that is associated with those activities or with asbestos abatement projects. It also applies to the removal of asbestos used in brakes and clutches. In all of those activities, the persons are getting rid of the ACM, and therefore have apparently decided that there are few, if any, benefits to the continued use of asbestos.

Even where the proposed rule would regulate the installation of asbestos-containing products during construction, EPA believes that there are few impacts on the benefits from such uses of asbestos. This proposed rule would not prevent anyone from using the products. The proposed rule would require some expenditures to comply with the additional safety practices, but as discussed in unit XII of this preamble, such costs are very small when considered in the context of existing State and local government expenditures for building maintenance.

EPA also believes that there are substitutes available for the asbestos uses that would be regulated by the revised WPR. In its 1986 rulemaking, OSHA concluded that the extensive tort litigation in the area of occupational exposure to asbestos and the awareness of the health effects associated with asbestos exposure had provided a strong incentive for producers and users of asbestos products to utilize substitutes. OSHA estimated that approximately 50 to 75 percent of producers of phenolic molding compounds have substituted other materials such as clay or fiberglass for asbestos. OSHA concluded that similar success had been achieved in the production of floor tile, where non-asbestos fibers and petrochemicals were being used, and in friction materials. OSHA noted that roofing felts, pipeline felts, and asphalt coatings have all been produced using fiberglass in place of asbestos fibers.

OSHA further noted that, in the past, the price of substitute materials had been much higher than the price of asbestos, but that the "full price" of using asbestos, which includes the potential cost of control methods, tort litigation, etc., had increased significantly. OSHA concluded, therefore, that the difference between the cost of using asbestos and the cost of using other substitute materials had diminished greatly and in many instances had disappeared entirely (*see* preamble to the 1986 OSHA Asbestos Standards - Availability of Substitutes - 51 FR 22651, June 20, 1986).

Inasmuch as the proposed EPA WPR neither proscribes nor prescribes the use of asbestos or substitutes for asbestos, the rule would have little, if any, impact on the availability of asbestos or require the use substitutes. However, persons who use ACM would be subject to the work practice requirements specified in this proposed rule in order to ensure that worker exposures do not exceed the PEL and action level.

C. Economic Effects of the Proposed Rule

Section 6(c)(1)(D) of TSCA requires EPA to determine the "reasonably ascertainable economic consequences of the proposed rule after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health." Based on the Regulatory Impact Analysis (RIA) developed in support of this proposed rulemaking action, EPA projects that the economic effects on State and local governments would be minimal and that the benefits to employees of State and local governments would be significant in terms of risk reduction.

EPA estimates that the total annualized cost to State and local governments of compliance with the proposed rule would range from $15.4 to $17.3 million. The annualized cost would be $3.1 million to $4.8 million for the maintenance sector, $11.8 million for the renovation sector, and $0.6 to 0.8 million for the brake and clutch repair sector. Costs are presented as a range because of uncertainties in the number and frequency with which repairs will have to be made in the maintenance and brake and clutch repair sectors. EPA believes that these are high estimates of the actual annual compliance costs that will be incurred in future years, because, as States and localities make repairs that involve asbestos, many will decide to replace the ACM with a substitute.

When these costs are considered in the context of state and local government budgets dedicated to building maintenance, the costs of the proposed rule are very small. The incremental compliance costs for the proposed rule in both the maintenance and renovation sectors would cause 0.21 to 0.24 percent increase in the costs of State and local government spending for building upkeep. States covered by the EPA WPR are already required to

comply with worker protection requirements for public sector workers engaged in asbestos abatement projects. Such a minimal change in the cost of building maintenance is unlikely to have any significant impact on State and local government budgets.

Costs were also measured in terms of cost per cancer case avoided. The cost per case avoided was calculated by dividing the social cost of the rule by the number of cases potentially prevented by the rule over the next 30 years. Compliance with the proposed rule was estimated to prevent between 61 and 67 asbestos-related cancer deaths over 30 years at a social cost of $15,442,787 to $17,331,401 millon per year. Taking the mid-point of the benefits and cost ranges, for the rule as a whole, the average annualized cost per case avoided would be $5.1 million. In the maintenance sector, the cost per case avoided is estimated to be $5.6 million; in the renovation sector, the cost per case avoided is estimated at $7.1 million; and in the brake and clutch repair sector, the cost per case avoided is estimated to be between $0.7 and $0.9 million.

EPA believes the cost per case avoided is overstated in the maintenance and renovation sectors, because not all benefits are counted. The estimates do not account for the cancer cases that the proposed rule is likely to prevent among other building occupants and bystanders who are located in the vicinity of the asbestos maintenance and renovation projects covered by the proposed rule.

D. Evaluation of Other Statutes

Under section 6(c) of TSCA, EPA may not promulgate a rule under section 6(a) of TSCA if EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA, unless EPA finds it is in the public interest to protect against the risk by action under TSCA. EPA has analyzed other statutes administered by EPA and concludes that no other law administered by EPA will satisfactorily eliminate or reduce the risks to State and local government workers.

Under section 9(a) of TSCA, EPA is required to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or reduce a given risk. This amendment would extend coverage only to persons not covered by other Federal laws. The only statute not administered by EPA that could reduce risks from workplace exposure to asbestos is the Occupational Safety and Health (OSH) Act, administered by OSHA. However, the OSH Act does not apply to State and local government employees. The OSH Act does provide that a state can implement its own state worker protection plan, subject to approval by the Secretary of Labor. Twenty-three States and two U.S. territories have implemented State plans. Twenty-seven States do not have OSHA-approved State plans. EPA has determined that there is no statute administered by another Federal agency that can prevent or reduce the risk of asbestos exposure presented to public sector employees not covered by the OSHA Asbestos Standards or by State plans during asbestos-related construction and brake and clutch repair work. EPA's analysis of this issue is in the preamble to the 1986 EPA WPR (51 FR 15722).

XII. Finding of Unreasonable Risk

TSCA section 6 requires EPA to weigh the benefits against the costs of the proposed rule. To fulfill this requirement, EPA prepared an RIA to assess the costs and benefits of the proposed rule.

In the RIA, the benefits of the proposed rule were estimated in terms of the number of deaths from lung cancer, mesothelioma, and gastrointestinal cancers attributable to asbestos exposure that would be prevented by the new, lower exposures to asbestos due to the proposed rule. EPA used the models developed by Nicholson for OSHA and EPA to estimate the relative and absolute risks of lung cancer and mesothelioma cases, respectively. A detailed discussion of the data inputs for the health model is found in Appendix C of the RIA.

EPA estimates that 69 to 75 asbestos-related deaths would occur among unprotected public sector workers engaged in construction work and brake and clutch repair over the course of 30 years in the absence of the proposed EPA WPR, and that 61 to 67 of these deaths would be avoided under the proposed rule.

EPA believes that the estimated benefits are understated. The true magnitude of risk reduction is not reflected in the estimated benefits, because the benefits of risk reduction are measured only for the incremental decrease in exposure from the exposure levels estimated by OSHA in its 1986 asbestos standard, and not for the full reduction from present, unregulated exposure levels. Exposures to persons other than workers in areas where asbestos-related work activities are being conducted are also not quantified.

EPA weighed the costs and benefits of extending coverage for asbestos-related construction work and brake and clutch repair to State and local government workers. EPA believes that the benefits of 61 to 67 cancer cases avoided in the unprotected public sector worker population outweigh the estimated annualized cost per case avoided of $5.1 million.

EPA believes, therefore, that unregulated exposure to asbestos in construction and brake and clutch repair work in public sector workplaces presents an unreasonable risk of injury to human health.

XIII. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under section 6 of TSCA. Therefore, failure to comply with the rule would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Fail or refuse to establish and maintain records as required by the rule; (2) fail or refuse to permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of the rule could constitute a separate violation. Knowing or willful violations of the rule could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of the rule.

XIV. Confidentiality

All comments will be placed in the public record unless the commentater claims that they contain confidential business information (CBI), and the comments are clearly labeled as containing claimed CBI when they are submitted. Because of the need to expedite this process, CBI claims should be accompanied by comments substantiating the claim as described in 40 CFR 2.204(e)(4). While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all comments subject to CBI claims should be submitted to EPA for the public file.

It is the responsibility of the commentater to comply with 40 CFR

part 2 so that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that information claimed to be CBI is included, or marking "CONFIDENTIAL," "TSCA CBI," or a similar designation on the face of each document or attachment in the comment which contains the claimed CBI. EPA will consider the failure to clearly identify the claimed confidential status on the face of the comment as a waiver of any such claim and will make such information available to the public without further notice to the commentater or business.

XV. Request for Comments

EPA is requesting comment on the proposed rule only to the extent that it would amend or change the existing regulations. EPA is not soliciting comments on provisions of the existing regulations that would not be changed by this proposal. Some provisions of the existing rule and appendices are reproduced here for clarity and to facilitate understanding of how the changes and amendments fit within the existing regulatory scheme. The existing appendices are reproduced in their entirety because these appendices, along with the new appendices incorporated in the rule, are moved from § 763.121(p) and recodified as Appendices to 40 CFR part 763, Subpart G.

XVI. Rulemaking Record

EPA has established a record for this rulemaking under document control number OPPTS–62125. A public version of the record and an index of documents in the record are available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as, the TSCA Public Docket Office from noon and to 4 p.m., Monday through Friday, except legal holidays. TSCA NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC.

The record includes information considered by EPA in developing this proposed rule, including the following categories of information: (1) **Federal Register** notices cited in this document, (2) support documents, and (3) other referenced documents.

The record also incorporates by reference the rulemaking record for the 1987 EPA WPR final rule (Docket Number OPPTS–62050) which includes the dockets for the 1986 OSHA Asbestos Standard, and the 1986 EPA WPR.

XVII. Support Document

USEPA, OPPT, OPPTS. Asbestos Worker Protection Rule. Regulatory Impact Analysis. Revised Draft Report, January 13, 1993. Revised July 23, 1993. Prepared by ICF, Inc., Contract Number 68–D2–0064.

XVIII. References

(1) USEPA, ORD, OHEA. Airborne Asbestos Health Assessment Update. EPA/600/8–84/003F, June 1986.

(2) USEPA, OPTS, OTS. Toxic Substances; Asbestos Abatement Projects; Worker Protection; Final Rule (51 FR 15722, April 25, 1986).

(3) USEPA, 1987. Asbestos Abatement Projects; Worker Protection; Final Rule (52 FR 5618, February 25, 1987).

(4) USEPA, 1987. Asbestos-Containing Materials in Schools; Final Rule and Notice. Part 763 (amended) subpart E, 52 FR 41926, October 30, 1987.

(5) USDOL, OSHA. 20 CFR Parts 1910 and 1926 "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," Final Rules (June 20, 1986, 51 FR 22612).

(6) USDOL, OSHA. 29 CFR Parts 1910 and 1926 "Asbestos, Tremolite, Anthophyllite, and Actinolite"; Final Rules. Preamble. (September 14, 1988, 53 FR 35610).

(7) USDOL, OSHA. 29 CFR Parts 1910 and 1926 "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," Final Rule; Partial Response to Court Remand. Preamble. (December 20, 1989, 54 FR 52024).

(8) USDOL, OSHA. 29 CFR Parts 1910 and 1926 "Occupational Exposure to Asbestos," Final Rule; Partial Response to Court Remand. Preamble. (February 5, 1990, 55 FR 3724).

(9) USDOL, OSHA. 29 CFR Parts 1910 and 1926 "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite; Proposed Rule" (July 20, 1990, 55 FR 29712).

XIX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

EPA has determined that the proposed amendment to the EPA WPR will not have an effect on the economy of $100 million annually. EPA has prepared an RIA as part of this rulemaking which estimates that the economic impact of the proposed rule to State and local governments would not be significant. EPA estimates that the overall costs of the proposed rule to the 27 State and local governments would be about $15.4 to $17.3 million per year over 30 years and would constitute only a very small percentage of these entities' budgets. The compliance costs for the proposed rule in both the maintenance and renovation sectors would cause a 0.21 to 0.24 percent increase in the costs of State and local government spending for building upkeep.

A copy of the RIA has been included in the administrative record for this rule, and is available for public inspection, as outlined in Unit XVI of this Notice.

B. Executive Order 12875

Executive Order 12875 (58 FR 58093, October 28, 1993) requires the Agency to consult with representatives of affected State, local, and tribal governments prior to the formal promulgation of a regulation containing a proposed unfunded mandate. Through the Forum on State and Tribal Toxics Action (FOSTTA), EPA briefed the States that are affected by the EPA WPR, seeking comments on the proposed WPR amendments. The Forum is a mechanism for State and tribal officials to cooperate in addressing toxics-related issues and to improve communication and coordination between States, tribes, and the EPA. FOSTTA has forged a communication network linking the States and tribes and EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and the Office of Enforcement and Compliance Assurance (OECA) on a variety of toxics-related issues. EPA met with members of the FOSTTA Coordinating Committee at a meeting on February 27, 1994, to discuss the provisions of the EPA WPR. The National Conference of State Legislatures (NCSL), through FOSTTA, provided EPA with a summary of

findings from a survey of asbestos programs in States without OSHA-approved State plans. Information regarding EPA's consultation with States (i.e.,the EPA briefing paper submitted to the FOSTTA membership, FOSTTA Coordinating Committee Meeting Agenda, and NCSL survey summary) has been included in the administrative record for this proposed rule and is available for public inspection in the Docket for the EPA WPR.

The proposed EPA WPR would require State and local governments to comply with additional worker protection provisions to protect State and local government workers from exposure to asbestos. The Regulatory Impact Analysis (RIA), developed to support this rulemaking, concluded that while the proposed rule may affect a substantial number of State and local government entities, the costs of additional worker protection requirements under this proposed rule would not have a significant impact on State and local government budgets, even on those portions of local government budgets that are devoted to building maintenance (see unit XIX.C. of this preamble). In addition, the proposed regulatory text provides, at § 763.122, Exclusions for States, that EPA may grant exclusions from the EPA WPR requirements to States that develop their own State worker protection plans.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 605(b)), EPA must prepare a Regulatory Flexibility analysis for all regulations that will have a significant impact on a substantial number of small entities. The Act defines "small entities" as including small governmental jurisdictions and further defines small governmental jurisdictions as the governments of cities, towns, townships, villages, school districts, or special districts that have populations of fewer than 50,000. Because the proposed rule will affect governmental jurisdictions in the 27 States covered by the EPA WPR that engage in construction work or brake and clutch repair work, the proposed rule can reasonably be expected to affect a substantial number of small governmental entities. However, the costs of the proposed rule represent only 0.21 to 0.24 percent of costs expended by State and local governments for building upkeep. Thus, the costs of the proposed rule will not have a significant impact even on those portions of local government budgets that are devoted exclusively to building maintenance. As a result, the Agency concludes that the proposed rule will not have a significant impact on a substantial number of small governmental jurisdictions and that a full Regulatory Flexibility Analysis is therefore, unnecessary. A discussion of EPA's economic analysis of this proposed amendment to the WPR appears in Unit XI of this preamble.

Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval, as a revision to OMB control number 2070–0072, to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1246.04), and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 or by calling (202) 260–2740.

This collection of information is estimated to have a public reporting burden averaging 1 hour per response, and to require 24.02 hours per recordkeeper annually. This includes time for reviewing the collection of information. The collection activities for this rule include: (1) Read and interpret rule; (2) respirator program, and (3) exposure monitoring activities; (4) training program; (5) medical surveillance reporting and recordkeeping; (6) employee and agency access; and (7) report project initiation. The total annual burden hours is 52,042, and represents an incremental burden-hour increase of 4,160 hours over the total annual reporting burden for the 1987 EPA WPR.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Asbestos in schools (AHERA), Hazardous substances, Reporting and recordkeeping requirements, State and local governments, Worker protection.

Dated: October 14, 1994.

Carol M. Browner.

Administrator.

Therefore, it is proposed that 40 CFR part 763 be amended as follows:

Part 763—[AMENDED]

1. The authority citation for part 763 would continue to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. Section 763.91(b) is revised to read as follows:

§ 763.91 Operations and maintenance.

* * * * *

(b) Worker protection. See Subpart G of this part.

* * * * *

3. The subpart heading for subpart G is revised to read as follows: "Asbestos Worker Protection."

Appendix B to Subpart E [Redesignated]

4. Appendix B to Subpart E is redesignated as Appendix G to Subpart G of this part, and Appendix B to Subpart E is reserved.

5. Section 763.120 is revised to read as follows:

§ 763.120 Scope.

(a) This part establishes requirements that State and local government employers must follow to protect employees from occupational exposure to asbestos during construction work where asbestos is present, and during automotive brake and clutch repair and service operations. Some of these requirements apply only to construction work, and do not apply to brake and clutch operations. Requirements that apply only to construction work are contained in § 726.121(d) which governs communications on multi-employer worksites, and § 726.121(e)(6), (i)(4), and (j)(2) which govern asbestos removal, demolition, and renovation operations.

(b) Appendix F of this subpart (Work Practices and Engineering Controls for Major Asbestos Removal, Renovation, and Demolition Operations), Appendix G of this subpart (Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation and Maintenance Activities), and Appendix K of this subpart (Work Practices and Engineering Controls for

Automotive Brake Repair Operations) are designed to provide guidelines to assist employers in complying with the requirements of this rule. These appendices recommend specific work practices and engineering controls that State and local government employers may follow to reduce employee exposures to asbestos in the workplace. Employers who use the recommended work practices and controls and who achieve employee exposures below the action level of 0.1 fibers cubic centimeter will be able to avoid certain burdens that would be imposed by complying with requirements triggered when employee exposures to asbestos exceed the rule's action level or permissible exposure limit.

(c) The requirements in this subpart apply only to State and local government employers that are not subject to the asbestos standards of OSHA, 29 CFR 1910.1001 or 29 CFR 1926.58, a State asbestos standard that OSHA has approved under section 18 of the Occupational Safety and Health Act, or a State asbestos plan that EPA has determined is comparable to, or more stringent than, this part.

(d) The protections established in this part extend to employees, including employees who are prisoners or students, of all State and local governments that are subject to the requirements of this subpart.

6. Section 763.121 is amended by removing from paragraph (b) the definitions for "asbestos abatement project" and "friable asbestos material," by alphabetically inserting the definitions for "automotive brake and clutch repair operations" and "construction work," and by revising the definitions for "emergency project," by revising paragraphs (c), (e)(1) and (e)(2), by redesignating and revising paragraph (e)(6)(iii)(A) as (e)(6)(iii), by deleting paragraph (e)(6)(iii)(B), by adding paragraph (e)(7), by revising paragraphs (f)(1)(ii), (f)(1)(iii), (f)(2)(ii), (f)(2)(iii), and (f)(4), by revising the introductory text of paragraph (g)(1)(i), revising (g)(1)(ii), by removing paragraph (g)(2)(iii), by revising paragraphs (g)(3), (h)(1)(iii), (h)(3)(i), (i)(1), (i)(2)(i), (i)(2)(ii), and (j)(1)(iii), by adding paragraph (j)(2)(vii) and paragraph (j)(3), by revising paragraph (k)(1)(i), by adding paragraph (k)(1)(iii), by revising paragraph (k)(3)(i), by adding paragraphs (k)(3)(iii)(I), (k)(3)(iii)(J) and (k)(4)(iii), by revising paragraph (m)(1)(i), by adding paragraph (m)(4)(i)(D), by revising paragraphs (n)(1)(i), by redesignating paragraph (o) as paragraph (q) and revising it, by adding a new paragraph (o), by redesignating paragraph (p) as paragraph (r) and revising it to read as follows:

§ 763.121 Regulatory requirements.

* * * * *

(b) Definitions.

* * * * *

Automotive brake and clutch repair operations means repair, cleaning and replacement of asbestos-containing clutch plates and brake pads, shoes, and linings and removal of asbestos-containing residue from brake drums or clutch housing that has been deposited as brakes and clutches wear.

* * * * *

Construction work means work for construction, alteration, and/or repair, including painting and decorating, and includes (but is not limited to) the following construction activities:

(1) Demolition or salvage of structures where asbestos is present;

(2) Removal or encapsulation of materials containing asbestos;

(3) Construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof, that contain asbestos;

(4) Installation of products containing asbestos;

(5) Asbestos spill/emergency cleanup, and

(6) Transportation, disposal, storage, or containment of asbestos or products containing asbestos on the site or location at which construction activities are performed.

* * * * *

Emergency project means a project involving the removal, enclosure, or encapsulation of asbestos-containing material that was not planned, but results from a sudden unexpected event.

* * * * *

(c) *Permissible exposure limits (PELS).*--(1) *Time-weighted average limit (TWA).* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.2 fibers/cubic centimeter (f/cc) of air as an 8–hour TWA as determined by the method prescribed in Appendix A of this section, or by an equivalent method.

(2) *Excursion limit.* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 1.0 (1 f/cc) of air as averaged over a sampling period of 30 minutes.

(3) *Alternative voluntary method.* The employer may utilize exposure limits based on Transmission Electron Microscopy (TEM) Analytical Method following the method contained in part 763 Appendix A to Subpart E. In order to achieve limits comparable to the number of fibers counted by Phase Contrast Microscopy (PCM), the corresponding exposure limit, by TEM for the PEL of 0.2 f/cc, is 1.3 structures/cubic centimeter (s/cc) for an 8–hour TWA. The corresponding exposure limit, by TEM for the excursion limit of 1.0 f/cc as averaged over a sampling period of 30 minutes, is 6.7 s/cc averaged over the 30–minute excursion period.

* * * * *

(e) *Regulated areas.*--(1) *General.* The employer shall establish a regulated area in work areas where airborne concentrations of asbestos exceed or can reasonably be expected to exceed the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(2) *Demarcation.* The regulated area shall be demarcated in any manner that minimizes the number of persons within the area and protects persons outside the area from exposure to airborne concentrations of asbestos in excess of the TWA and/or excursion limit.

* * * * *

(6) * * *

(iii) In addition to the qualifications specified in paragraph (b) of this section, the competent person shall be trained in all aspects of asbestos abatement, the contents of this subpart, the identification of asbestos and its removal procedures, and other practices for reducing the hazard. Such training shall be obtained in a comprehensive course, such as a course conducted by an EPA or State-approved training provider, or an equivalent course.

(7) For small-scale, short-duration operations, the employer who complies with the provisions of Appendix G of this subpart is not also required to comply with paragraphs (e)(6) and (j)(1)(i) and (j)(2)(i) of this section.

(f) * * *

(1) * * *

(ii) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8–hour TWA and 30–minute short-term exposures of each employee.

(iii) Representative 8–hour TWA employee exposures shall be determined on the basis of one or more samples representing full-shift exposure for employees in each work area. Representative 30–minute short-term employee exposures shall be determined on the basis of one or more samples representing 30–minute exposures associated with operations that are most likely to produce exposures above the excursion limit for employees in each work area.

(2) * * *

(ii) The employer may demonstrate that employee exposures are below the

action level by means of objective data demonstrating that the product or material containing asbestos cannot release airborne fibers in concentrations exceeding the action level under those work conditions having the greatest potential for releasing asbestos.

(iii) Where the employer has monitored each asbestos job for the TWA, and where the employer has monitored after [insert date 60 days after date of publication of the final rule] for the excursion limit, and the data were obtained during work operations conducted under workplace conditions closely resembling the processes, type of material, control methods, work practices, and environmental conditions used and prevailing in the employer's current operations, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (f)(2)(i) of this section.

* * * * *

(4) *Termination of monitoring.* (i) If the periodic monitoring required by paragraph (f)(3) of this section reveals that employee exposures, as indicated by statistically reliable measurement, are below the action level and/or excursion limit, the employer may discontinue monitoring for those employees whose exposures are represented by such monitoring.

(ii) Additional monitoring. Notwithstanding the provisions of paragraph (f)(4)(i) of this section, the employer shall institute the exposure monitoring required under paragraph (f)(3) of this section whenever there has been a change in process, control equipment, personnel or work practices that may result in new or additional exposures above the action level and/or excursion limit or when the employer has any reason to suspect that a change may result in new or additional exposures above the action level and/or excursion limit.

(iii) Exception: When all employees within a regulated area are equipped with supplied-air respirators operated in the positive-pressure mode, the employer may dispense with the monitoring required by this paragraph.

* * * * *

(g) * * *

(1) * * *

(i) The employer shall use one or any combination of the following control methods to achieve compliance with the TWA and/or excursion limit prescribed by paragraph (c) of this section: * * *

(ii) Wherever the feasible engineering and work practice controls described in this paragraph are not sufficient to reduce employee exposure to or below the TWA and/or excursion limit prescribed in paragraph (c) of this section, the employer shall use them to reduce employee exposure to the lowest levels attainable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (h) of this section.

* * * * *

(3) *Employee rotation.* The employer shall not use employee rotation as a means of compliance with the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(h) * * *

(1) * * *

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the TWA and/or excursion limit.

* * * * *

(3) * * *

(i) Where respiratory protection is used, the employer shall institute a respirator program in accordance with the OSHA standard for respiratory protection (29 CFR 1910.134(b), (d), (e), and (f)).

* * * * *

(i) * * *

(1) *General.* The employer shall provide and require the use of protective clothing, such as coveralls or similar whole body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos that exceed the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(2) * * *

(i) The employer shall ensure that laundering of contaminated clothing is done so as to prevent the release of airborne asbestos in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(ii) Any employer who gives contaminated clothing to another person for laundering shall inform such person of the requirement in paragraph (i)(2)(i) of this section to effectively prevent the release of airborne asbestos in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section.

* * * * *

(j) * * *

(1) * * *

(iii) Whenever food or beverages are consumed at the worksite and employees are exposed to airborne concentrations of asbestos in excess of the TWA and/or excursion limit, the employer shall provide lunch areas in which the airborne concentration of asbestos is below the action level and/or excursion limit.

* * * * *

(2) * * *

(vii) For small-scale, short-duration operations, the employer who complies with the provisions of Appendix G of subpart G is not also required to comply with paragraphs (e)(6), (j)(1)(i) and (j)(2)(i) of this section.

(3) *Smoking in work areas.* The employer shall ensure that employees do not smoke in work areas where they are occupationally exposed to asbestos because of activities in that work area.

(k) * * *

(1) * * *

(i) Warning signs that demarcate the regulated area shall be provided and displayed at each location where airborne concentrations of asbestos may be in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section. Signs shall be posted at such a distance from such a location that an employee may read the signs and take necessary protective steps before entering the area marked by the signs.

* * * * *

(iii) The employer shall ensure that employees working in, and contiguous to, regulated areas comprehend the warning signs required to be posted by paragraph (k)(1)(i) of this section. Means to ensure employee comprehension may include the use of foreign languages, pictographs, and graphics.

* * * * *

(3) * * *

(i) The employer shall institute a training program for all employees who are exposed to airborne concentrations of asbestos at or above the action level and/or excursion limit and shall ensure their participation in the program.

* * * * *

(iii) * * *

(I) The names, addresses and phone numbers of public health organizations which provide information, materials and/or conduct programs concerning smoking cessation. The employer may distribute the list of such organizations contained in Appendix J to Subpart G, to comply with this requirement.

(J) The requirements for posting signs and affixing labels and the meaning of the required legends for such signs and labels.

(4) * * *

(iii) The employer shall inform all employees concerning the availability of self-help smoking cessation program material. Upon employee request, the employer shall distribute such material, consisting of NIH Publication No. 89–1647, or equivalent self-help material, which is approved or published by a public health organization listed in Appendix J to Subpart G.

* * * * *

(m) * * *

(1) * * *

(i) *Employees covered.* The employer shall institute a medical surveillance program for all employees engaged in work involving levels of asbestos at or above the action level and/or excursion limit for 30 or more days per year, or who are required by this section to wear negative pressure respirators.

* * * * *

(4) * * *

(i) * * *

(D) A statement that the employee has been informed by the physician of the increased risk of lung cancer attributable to the combined effect of smoking and asbestos exposure.

* * * * *

(n) * * *

(1) * * *

(i) Where the employer has relied on data from earlier monitoring that demonstrates that products made from or containing asbestos are not capable of releasing asbestos fibers in concentrations at or above the action level and/or excursion limit under the expected conditions of processing, use, or handling, to exempt such operations from the initial monitoring requirements under paragraph (f)(2) of this section, the employer shall establish and maintain an accurate record of data from earlier monitoring reasonably relied on in support of the exemption.

* * * * *

(o) *Asbestos brake and clutch repair and service operations.* The employer of employees engaged in asbestos brake and clutch repair and service operations is subject to all the provisions in this section except for paragraphs (d), (e)(6), (i)(4), and (j)(2).

(p) *Compressed air.* Compressed air shall not be used to remove asbestos in brake and clutch repair operations, unless the compressed air is used in conjunction with a ventilation system designed to capture the dust cloud created by the compressed air.

(q) *Effective date.* These amendments shall become effective [insert date 60 days after date of publication of the final rule].

(r) *Appendices.* (1) Appendices A, C, D, and E to this subpart are mandatory.

(2) Appendix B to this subpart is informational and is not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

(3) Appendix F to this subpart is nonmandatory and is intended to provide guidelines to assist employers in complying with the requirements of § 763.121.

(4) Appendix G to this subpart is nonmandatory. Employers wishing to be exempted from the requirements of § 763.121(e)(6), (j)(1)(i)(B), and (j)(2)(i) shall instead comply with provisions of this Appendix for small-scale operations to achieve employee exposures below the rule's action level.

(5) Appendices H, I, and J to this subpart are nonmandatory and are not intended to create any additional obligations not otherwise imposed, or to detract from any existing obligations.

(6) Appendix K to this subpart is nonmandatory. Employers wishing to be exempted from the requirements of § 763.121 that are triggered by employee exposures above the action level or PEL during brake and clutch repair operations may instead comply with the provisions of this Appendix.

Appendices A–E to § 763.121 [Redesignated]

7. By redesignating Appendices A through E to § 763.121 as Appendices A through E to Subpart G.

8. Section 763.122 is revised to read as follows:

§ 763.122 Exclusions for States.

(a) *Application procedures for existing plans.* States that currently have EPA-approved State Asbestos Worker Protection Plans have 6 months from [effective date of rule] or such other reasonable time as suggested by the particular State and approved by EPA to make their regulations comparable to or more stringent than this part, and to submit their regulations to EPA for review. If in such reasonable time after [effective date of rule], these States have not so revised their regulations and submitted them to EPA, State and local government employers in such States shall be subject to the requirements of this part.

(1) Upon request from a State Governor, and after notice and comment, EPA may exclude that State from the requirements of this subpart in accordance with paragraphs (b), (c), and (d) of this section.

(2) All requirements of the subpart shall apply until an exclusion is granted under this section.

(b) *Request.* Each request by a Governor to exclude a State from requirements of this subpart shall be sent with three complete copies of the request to the Regional Administrator for the EPA Region in which the State is located and shall include:

(1) A copy of the State statutes, regulations, and provisions relating to its asbestos worker protection program.

(2)(i) The name of the State agency that is, or will be, responsible for administering and enforcing the State's asbestos worker protection laws, the names and job titles of responsible officials in that Agency and the phone numbers where the officials can be contacted.

(ii) In the event that more than one agency is or will be responsible for administering and enforcing these laws, a description of the functions performed by each agency, identification of the lead agency, how the program will be coordinated by the lead agency to ensure consistency and effective administration of the program within the State, the names and job titles of responsible officials in the agencies and the phone numbers where the officials can be contacted. The lead agency will serve as the central contact point for the EPA.

(3) Detailed reasons, supporting papers, and the rationale for concluding that the State's asbestos worker protection program provisions for which the request is made are at least as stringent as the requirements of this subpart.

(4) A discussion of any special situations, problems, and needs pertaining to the exclusion request accompanied by an explanation of how the State intends to handle them.

(5) A statement of the resources that the State intends to devote to the administration and enforcement of the State's asbestos worker protection laws.

(6) Copies of any specific or enabling State statutes (enacted and pending enactment) and regulations (promulgated and pending promulgation) and regulations relating to the request, including provisions for assessing criminal and/or civil penalties.

(7) Assurance from the Governor, the Attorney General, or the legal counsel of the lead Agency that the lead Agency or other cooperating agencies have the legal authority necessary to carry out the requirements relating to the request.

(c) *General notice.* (1) Within 60 days after receipt of a request for an exclusion, EPA will determine the completeness of the request. If EPA does not request further information within the 60–day period, the request will be deemed complete.

(2) EPA will publish a notice in the **Federal Register** that announces receipt of the request, describes the information submitted under paragraph (b) of this section, and solicits written comment from interested members of the public.

(3) If, during the comment period, EPA receives a written objection to a Governor's request, it will publish a notice of the objection in the **Federal Register**. Each comment must include

the name and address of the person submitting the comment.

(d) *Criteria.* EPA may exclude a State from the requirements of this subpart if:

(1) The State's lead agency and other cooperating agencies have the legal authority necessary to ensure that the State's program of asbestos worker protection is at least as stringent as that provided for in this subpart.

(2) The State has an enforcement mechanism to allow it to implement the program described in the exclusion request.

(3) The lead Agency and any cooperating agencies have or will have qualified personnel to carry out the provisions relating to the exclusion request.

(4) The State will devote adequate resources to the administration and enforcement of its provisions relating to the exclusion request.

(5) When specified by EPA, the State gives satisfactory assurances that necessary steps, including specific actions it proposes to take and a time schedule for their accomplishment, will be taken within a reasonable time to conform with applicable criteria under paragraph (d)(2) through (d)(4) of this section.

(e) *Decision.* EPA will publish a notice in the **Federal Register** announcing its decision to grant or deny a Governor's request for exclusion from the requirements of this subpart. The notice will include EPA's reasons and rationale for granting or denying the Governor's request.

(f) *Modifications.* When any substantial change is made in the laws governing asbestos worker protection, or in the administration or enforcement of a State program in a State that was excluded under this section, a responsible official in the lead agency shall submit such changes to EPA.

(g) *Reports.* The lead agency in each State that has been granted an exclusion by EPA from requirements of this subpart shall submit a report to the Regional Administrator for the Region in which the State is located at least once every 12 months to include the following information:

(1) A summary of the State's implementation and enforcement activities during the last reporting period relating to the exclusion under this section, including enforcement actions taken.

(2) Any changes in the administration or enforcement of the State program implemented during the last reporting period.

(3) Other reports as may be required by EPA to carry out effective oversight of any exclusion granted from this rule's requirements.

(h) *Oversight.* EPA may periodically evaluate the adequacy of a State's implementation and enforcement of and resources devoted to carrying out requirements relating to the exclusion. This evaluation may include, but is not limited to, site visits to State or local facilities where asbestos worker protection provisions should be in place, without prior notice to the State.

(i) *Informal Conference.* (1) EPA may request that an informal conference be held between appropriate State and EPA officials when EPA has reason to believe that a State has failed to:

(i) Substantially comply with the terms of any provision under this section.

(ii) Meet the criteria under paragraph (d) of this section, including the failure to carry out enforcement activities, or act on violations of the State program.

(2) EPA will:

(i) Specify to the State those aspects of the State's program believed to be inadequate.

(ii) Specify to the State the facts that support the belief of inadequacy.

(3) If EPA finds, on the basis of information submitted by the State at the informal conference, that deficiencies did not exist or were corrected by the State, no further action is required.

(4) Where EPA finds that deficiencies in the State program exist, a plan to correct the deficiencies shall be negotiated between the State and EPA. The plan shall detail the deficiencies found in the State program, specify the steps the State has taken or will take to remedy the deficiencies, and establish a schedule for each remedial action to be initiated.

(j) *Rescission.* (1) If the State fails to meet with EPA, or fails to correct deficiencies raised at the informal conference, EPA will deliver to the Governor of the State and a responsible official in the lead Agency, a written notice of its intent to rescind the exclusion.

(2) EPA will publish in the **Federal Register** a notice that rescinds the exclusion, describes those aspects of the State's program determined to be inadequate, and specifies the facts that support the findings of inadequacy.

9. In § 763.124, paragraphs (a), (b)(2), (b)(3), (c), and (d) are revised to read as follows:

§ 763.124 Reporting.

(a) Employers subject to this rule must submit a report on their proposed project activities to the Regional Asbestos Coordinator for the EPA Region in which the asbestos construction project is located at least 10 days before they begin any asbestos construction project, except "small-scale, short-duration" projects, or "emergency projects," as defined in § 763.121(b). Employers must report any emergency project subject to this rule as soon as possible but in no case more than 48 hours after the project begins. A list of EPA Regional Offices is given under § 1.7 (b) of this chapter.

(b) * * *

(2) The location, including street address, of the asbestos construction work project.

(3) The scheduled starting and completion dates for the asbestos construction work project.

(c) The report must be received at least 10 days before the asbestos construction work project begins unless the report is for an emergency project. In such a case, the report must be received as soon as possible but in no case more than 48 hours after the project begins.

(d) Employers do not have to report under this section if EPA receives a notice under the National Emission Standard for Asbestos, § 61.146 of this chapter for construction work projects exceeding 160 square feet or 260 linear feet, at least 10 days before they begin an asbestos construction work project and that notice clearly indicates that employees covered by this rule will perform some or all of the asbestos construction work.

10. In § 763.125, paragraphs (a) and (e) are revised to read as follows:

§ 763.125 Enforcement.

(a) Failure to comply with any provision of this subpart is a violation of section 15 of the Act (15 U.S.C. 2614).

* * * * *

(e) EPA may seek to enjoin an asbestos construction work project that is in violation of this subpart, or take actions under the authority of section 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

11. Section 763.126 is revised to read as follows:

§ 763.126 Inspections.

EPA may conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this subpart.

12. By revising newly redesignated Appendices A, B, C, E, and G to Subpart G, revising the title of newly redesignated Appendix D to Subpart G, and adding Appendices F and H through K to Subpart G to read as follows:

Appendix A to Subpart G—EPA/OSHA Reference Method—Mandatory

This mandatory appendix specifies the procedure for analyzing air samples for asbestos and specifies quality control procedures that must be implemented by laboratories performing the analysis. The sampling and analytical methods described below represent the elements of the available monitoring methods essential to achieve adequate employee exposure monitoring while allowing employers to use methods that are already established within their organizations. All employers who are required to conduct air monitoring under §763.121(f) are required to utilize analytical laboratories that use this procedure, or an equivalent method for collecting and analyzing samples.

Sampling and Analytical Procedure

1. The sampling medium for air samples shall be mixed cellulose ester filter membranes. These shall be designated by the manufacturer as suitable for asbestos counting. See below for rejection of blanks.

2. The preferred collection device shall be the 25-mm diameter cassette with an open-faced 50-mm electrically conductive extension cowl. The 37-mm cassette may be used if necessary, but only if written justification for the need to use the 37-mm filter cassette accompanies the sample results in the employee's exposure monitoring record.

3. An air flow rate between 0.5 liter/min and 2.5 liters/min shall be selected for the 25-mm cassette. If the 37-mm cassette is used, an air flow rate between 1 liter/min and 2.5 liters/min shall be selected.

4. Where possible, a sufficient air volume for each air sample shall be collected to yield between 100 and 1,300 fibers per square millimeter on the membrane filter. If a filter darkens in appearance or if loose dust is seen on the filter, a second sample shall be started.

5. Ship the samples in a rigid container with sufficient packing material to prevent dislodging the collected fibers. Packing material that has a high electrostatic charge on its surface (e.g., expanded polystyrene) cannot be used because such material can cause loss of fibers to the sides of the cassette.

6. Calibrate each personal sampling pump before and after use with a representative filter cassette installed between the pump and the calibration devices.

7. Personal samples shall be taken in the "breathing zone" of the employee (i.e., attached to or near the collar or lapel near the worker's face).

8. Fiber counts shall be made by positive phase contrast using a microscope with an 8 to 10 X eyepiece and a 40 to 45 X objective for a total magnification of approximately 400 X and a numerical aperture of 0.65 to 0.75. The microscope shall also be fitted with a green or blue filter.

9. The microscope shall be fitted with a Walton-Beckett eyepiece graticule calibrated for a field diameter of 100 micrometers (± 2 micrometers).

10. The phase-shift detection limit of the microscope shall be about 3 degrees measured using the HSE phase shift test slide as outlined below.

a. Place the test slide on the microscope stage and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note: The slide consists of seven sets of grooved lines (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7, seven being the least visible. The requirements for asbestos counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 and 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope that fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image deteriorates, clean and adjust the microscope optics. If the problem persists, consult the microscope manufacturer.

11. Each set of samples taken will include 10 percent blanks or a minimum of 2 blanks. The blank results shall be averaged and subtracted from the analytical results before reporting. Any samples represented by a blank having a fiber count in excess of 7 fibers/100 fields shall be rejected.

12. The samples shall be mounted by the acetone/triacetin method or a method with an equivalent index of refraction and similar clarity.

13. Observe the following counting rules.

a. Count only fibers equal to or longer than 5 micrometers. Measure the length of curved fibers along the curve.

b. In the absence of other information, count all particles as asbestos that have a length-to-width ratio (aspect ratio) of 3:1 or greater.

c. Fibers lying entirely within the boundary of the Walton-Beckett graticule field shall receive a count of 1. Fibers crossing the boundary once, having one end within the circle, shall receive the count of one-half (½). Do not count any fiber that crosses the graticule boundary more than once. Reject and do not count any other fibers even though they may be visible outside the graticule area.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of an individual fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields; stop counting at 100 fields regardless of fiber count.

14. Blind recounts shall be conducted at the rate of 10 percent.

Quality Control Procedures

1. *Intralaboratory program.* Each laboratory and/or each company with more than one microscopist counting slides shall establish a statistically designed quality assurance program involving blind recounts and comparisons between microscopists to monitor the variability of counting by each microscopist and between microscopists. In a company with more than one laboratory, the program shall include all laboratories and shall also evaluate the laboratory-to-laboratory variability.

2. *Interlaboratory program.* Each laboratory analyzing asbestos samples for compliance determination shall implement an interlaboratory quality assurance program, that as a minimum, includes participation of at least two other independent laboratories. Each laboratory shall participate in round robin testing at least once every 6 months with at least all the other laboratories in its interlaboratory quality assurance group. Each laboratory shall submit slides typical of its own work load for use in this program. The round robin shall be designed and results analyzed using appropriate statistical methodology.

3. All individuals performing asbestos analysis must have taken the NIOSH course for sampling and evaluating airborne asbestos dust or an equivalent course.

4. When the use of different microscopes contributes to differences between counters and laboratories, the effect of the different microscope shall be evaluated and the microscope shall be replaced, as necessary.

5. Current results of these quality assurance programs shall be posted in each laboratory to keep the microscopists informed.

Appendix B to Subpart G—Detailed Procedure for Asbestos Sampling and Analysis—Non-Mandatory

This appendix contains a detailed procedure for sampling and analysis and includes those critical elements specified in Appendix A of this section. Employers are not required to use this procedure, but they are required to use Appendix A of this section. The purpose of Appendix B of this section is to provide a detailed step-by-step sampling and analysis procedure that conforms to the elements specified in Appendix A of this section. Since this procedure may also standardize the analysis and reduce variability, EPA encourages employers to use this appendix.

Technique: Microscopy, Phase Contrast.

Analyte: Fibers (manual count).

Sample Preparation: Acetone/triacetin method.

Calibration: Phase-shift detection limit about 3 degrees.

Range: 100 to 1,300 fibers/mm ^{2} filter area.

Estimated Limit of Detection: 7 fibers/mm ^{2} filter area.

Sampler: Filter (0.8–1.2 μm mixed cellulose ester membrane, 25-mm diameter).

Flow Rate: 0.5 L/min to 2.5 L/min (25-mm cassette); 1.0 L/min to 2.5 L/min (37-mm cassette).

Sample Volume: Adjust to obtain 100 to 1,300 fibers/mm ^{2}.

Shipment: Routine.

Sample Stability: Indefinite.

Blanks: 10% of samples (minimum 2).

Standard Analytical Error: 0.25.

Applicability: The working range is 0.02 f/cc (1920–L air sample) to 1.25 f/cc (400–L sample). The method gives an index of airborne asbestos fibers but may be used for other materials such as fibrous glass by inserting suitable parameters into the counting rules. The method does not differentiate between asbestos and other fibers. Asbestos fibers less than ca. 0.25 μm diameter will not be detected by this method.

Interferences: Any other airborne fiber may interfere since all particles meeting the

counting criteria are counted. Chain-like particles may appear fibrous. High levels of nonfibrous dust particles may obscure fibers in the field of view and raise the detection limit.

Reagents:

1. Acetone.

2. Triacetin (glycerol triacetate), reagent grade.

Special Precautions: Acetone is an extremely flammable liquid and precautions must be taken not to ignite it. Heating of acetone must be done in a ventilated laboratory fume hood using a flameless, spark-free heat source.

Equipment:

1. *Collection device:* 25-mm cassette with 50-mm electrically conductive extension cowl with cellulose ester filter, 0.8 to 1.2 mm pore size and backup pad.

Note: Analyze representative filters for fiber background before use and discard the filter lot if more than 5 fibers/100 fields are found.

2. Personal sampling pump, greater than or equal to 0.5 l/min, with flexible connecting tubing.

3. Microscope, phase contrast, with green or blue filter, 8 to 10X eyepiece, and 40 to 45X phase objective (total magnification ca. 400X); numerical aperture=0.65 to 0.75.

4. Slides, glass, single-frosted, pre-cleaned, 25 x 75 mm.

5. Cover slips, 25 x 25 mm, No. 1½ unless otherwise specified by microscope manufacturer.

6. Knife, #1 surgical steel, curved blade.

7. Tweezers.

8. Flask, Guth-type, insulated neck, 250 to 500 mL (with single-holed rubber stopper and elbow-jointed glass tubing, 16 to 22 cm long).

9. Hotplate, spark-free, stirring type; heating mantle; or infrared lamp and magnetic stirrer.

10. Syringe, hypodermic, with 22-gauge needle.

11. Graticule, Walton-Beckett type with 100 µm diameter circular field at the specimen plane (area=0.00785 mm²), (Type G–22).

Note: The graticule is custom-made for each microscope.

12. HSE/NPL phase contrast test slide, Mark II.

13. Telescope, ocular phase-ring centering.

14. Stage micrometer (0.01 mm divisions).

Sampling

1. Calibrate each personal sampling pump with a representative sampler in line.

2. Fasten the sampler to the worker's lapel as close as possible to the worker's mouth. Remove the top cover from the end of the cowl extension (open face) and orient face down. Wrap the joint between the extender and the monitor's body with shrink tape to prevent air leaks.

3. Submit at least two blanks (or 10 percent of the total samples, whichever is greater) for each set of samples. Remove the caps from the field blank cassettes and store the caps and cassettes in a clean area (bag or box) during the sampling period. Replace the caps in the cassettes when sampling is completed.

4. Sample at 0.5 L/min or greater. Do not exceed 1 mg total dust loading on the filter. Adjust sampling flow rate, Q (L/min), and time to produce a fiber density, E (fibers/mm²), of 100 to 1,300 fibers/mm² [3.85 x 10^4 to 5 x 10^5 fibers per 25-mm filter with effective collection area (A_c=385 mm²)] for optimum counting precision (see step 21 below). Calculate the minimum sampling time, $t_{minimum}$ (min) at the action level (one-half of the current standard), L (f/cc) of the fibrous aerosol being sampled:

$$t_{minimum} = \frac{(A_c)(E)}{(Q)(L)\ 10^3}$$

5. Remove the field monitor at the end of sampling, replace the plastic top cover and small end caps, and store the monitor.

6. Ship the samples in a rigid container with sufficient packing material to prevent jostling or damage.

Note: Do not use polystyrene foam in the shipping container because of electrostatic forces which may cause fiber loss from the sample filter.

Sample Preparation

Note: The object is to produce samples with a smooth (nongrainy) background in a medium with a refractive index equal to or less than 1.46. The method below collapses the filter for easier focusing and produces permanent mounts which are useful for quality control and interlaboratory comparison. Other mounting techniques meeting the above criteria may also be used, e.g., the nonpermanent field mounting technique used in P & CAM 239.

7. Ensure that the glass slides and cover slips are free of dust and fibers.

8. Place 40 to 60 ml of acetone into a Guth-type flask. Stopper the flask with a single-hole rubber stopper through which a glass tube extends 5 to 8 cm into the flask. The portion of the glass tube that exits the top of the stopper (8 to 10 cm) is bent downward in an elbow that makes an angle of 20 to 30 degrees with the horizontal.

9. Place the flask in a stirring hotplate or wrap in a heating mantle. Heat the acetone gradually to its boiling temperature (ca. 58 °C).

Caution. The acetone vapor must be generated in a ventilated fume hood away from all open flames and spark sources. Alternate heating methods can be used, providing no open flame or sparks are present.

10. Mount either the whole sample filter or a wedge cut from the sample filter on a clean glass slide.

a. Cut wedges of ca. 25 percent of the filter area with a curved-blade steel surgical knife using a rocking motion to prevent tearing.

b. Place the filter or wedge, dust side up, on the slide. Static electricity will usually keep the filter on the slide until it is cleared.

c. Hold the glass slide supporting the filter approximately 1 to 2 cm from the glass tube port where the acetone vapor is escaping from the heated flask. The acetone vapor stream should cause a condensation spot on the glass slide ca. 2 to 3 cm in diameter. Move the glass slide gently in the vapor stream. The filter should clear in 2 to 5 sec. If the filter curls, distorts, or is otherwise rendered unusable, the vapor stream is probably not strong enough. Periodically wipe the outlet port with tissue to prevent liquid acetone dripping onto the filter.

d. Using the hypodermic syringe with a 22-gauge needle, place 1 to 2 drops of triacetin on the filter. Gently lower a clean 25-mm square cover slip down onto the filter at a slight angle to reduce the possibility of forming bubbles. If too many bubbles form or the amount of triacetin is insufficient, the cover slip may become detached within a few hours.

e. Glue the edges of the cover slip to the glass slide using a lacquer or nail polish.

Note: If clearing is slow, the slide preparation may be heated on a hotplate (surface temperature 50 °C) for 15 min. to hasten clearing. Counting may proceed immediately after clearing and mounting are completed.

Calibration and Quality Control

11. *Calibration of the Walton-Beckett graticule.* The diameter, d_c (mm), of the circular counting area and the disc diameter must be specified when ordering the graticule.

a. Insert any available graticule into the eyepiece and focus so that the graticule lines are sharp and clear.

b. Set the appropriate interpupillary distance and, if applicable, reset the binocular head adjustment so that the magnification remains constant.

c. Install the 40 to 45 X phase objective.

d. Place a stage micrometer on the microscope object stage and focus the microscope on the graduated lines.

e. Measure the magnified grid length, L_o (um), using the stage micrometer.

f. Remove the graticule from the microscope and measure its actual grid length, L_a (mm). This can best be accomplished by using a stage fitted with verniers.

g. Calculate the circle diameter, d_c (mm), for the Walton-Beckett graticule:

$$d_c = \frac{L_a \times D}{L_o}$$

h. Check the field diameter, D (acceptable range 100 mm ±2 mm) with a stage micrometer upon receipt of the graticule from the manufacturer. Determine field area (mm²).

12. *Microscope adjustments.* Follow the manufacturer's instructions and also the following:

a. Adjust the light source for even illumination across the field of view at the condenser iris.

Note: Kohler illumination is preferred, where available.

b. Focus on the particulate material to be examined.

c. Make sure that the field iris is in focus, centered on the sample, and open only enough to fully illuminate the field of view.

d. Use the telescope ocular supplied by the manufacturer to ensure that the phase rings (annular diaphragm and phase-shifting elements) are concentric.

13. Check the phase-shift detection limit of the microscope periodically.

a. Remove the HSE/NPL phase-contrast test slide from its shipping container and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note: The slide consists of seven sets of grooves (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7. The requirements for counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 to 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope which fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image quality deteriorates, clean the microscope optics and, if the problem persists, consult the microscope manufacturer.

14. *Quality control of fiber counts.*

a. Prepare and count field blanks along with the field samples. Report the counts on each blank. Calculate the mean of the field blank counts and subtract this value from each sample count before reporting the results.

Note 1: The identity of the blank filters should be unknown to the counter until all counts have been completed.

Note 2: If a field blank yields fiber counts greater than 7 fibers/100 fields, report possible contamination of the samples.

b. Perform blind recounts by the same counter on 10 percent of filters counted (slides relabeled by a person other than the counter).

15. Use the following test to determine whether a pair of counts on the same filter should be rejected because of possible bias. This statistic estimates the counting repeatability at the 95 percent confidence level. Discard the sample if the difference between the two counts exceeds 2.77 (F)s_r, where F=average of the two fiber counts and s_r=relative standard deviation, which should be derived by each laboratory based on historical in-house data.

Note: If a pair of counts is rejected as a result of this test, recount the remaining samples in the set and test the new counts against the first counts. Discard all rejected paired counts.

16. Enroll each new counter in a training course that compares performance of counters on a variety of samples using this procedure.

Note: To ensure good reproducibility, all laboratories engaged in asbestos counting are required to participate in the Proficiency Analytical Testing (PAT) Program and should routinely participate with other asbestos fiber counting laboratories in the exchange of field samples to compare performance of counters.

Measurement

17. Place the slide on the mechanical stage of the calibrated microscope with the center of the filter under the objective lens. Focus the microscope on the plane of the filter.

18. Regularly check phase-ring alignment and Kohler illumination.

19. The following are the counting rules:

a. Count only fibers longer than 5 um. Measure the length of curved fibers along the curve.

b. Count only fibers with a length-to-width ratio equal to or greater than 3:1.

c. For fibers that cross the boundary of the graticule field, do the following:

(1) Count any fiber longer than 5 um that lies entirely within the graticule area.

(2) Count as ½ fiber any fiber with only one end lying within the graticule area.

(3) Do not count any fiber that crosses the graticule boundary more than once.

(4) Reject and do not count all other fibers.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of a fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields. Stop at 100 fields regardless of fiber count.

20. Start counting from one end of the filter and progress along a radial line to the other end, shift either up or down on the filter, and continue in the reverse direction. Select fields randomly by looking away from the eyepiece briefly while advancing the mechanical stage. When an agglomerate covers ca. ⅛ or more of the field of view, reject the field and select another. Do not report rejected fields in the number of total fields counted.

Note: When counting a field, continuously scan a range of focal planes by moving the fine focus knob to detect very fine fibers which have become embedded in the filter. The small-diameter fibers will be very faint but are an important contribution to the total count.

Calculations

21. Calculate and report fiber density on the filter, E (fibers/mm²); by dividing the total fiber count, F; minus the mean field blank count, B, by the number of fields, n; and the field area, A_f (0.00785 mm² for a properly calibrated Walton-Beckett graticule):

$$E = \frac{(F/n_f) - (B/n_b)}{A_f} \quad \text{fibers/mm}^2$$

where:

n_f—number of fields in submission sample

n_b—number of fields in blank sample

22. Calculate the concentration, C (f/cc), of fibers in the air volume sampled, V (L), using the effective collection area of the filter, A_c (385 mm² for a 25-mm filter):

$$C = \frac{(E)(A_c)}{V(10^3)}$$

Note: Periodically check and adjust the value of A_c, if necessary.

Appendix C to Subpart G—Qualitative and Quantitative Fit Testing Procedures—Mandatory

Qualitative Fit Test Protocols

I. Isoamyl Acetate Protocol

A. Odor Threshold Screening. 1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25 °C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor-free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

5. The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor-free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor-free water.

7. The odor test and test blank jars shall be labeled 1 and 2 for jar identification. If the labels are put on the lids they can be periodically peeled, dried off, and switched to maintain the integrity of the test.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e. 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to identify correctly the jar containing the odor test solution, the IAA qualitative fit test may not be used.

11. If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

B. Respirator selection. 1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least five sizes of elastomeric half facepieces, from at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be

positioned on the face, how to set strap tension, and how to determine a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject should understand that the employee is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape and, if fitted properly and used properly, will provide adequate protection.

4. The test subject holds each facepiece up to the face and eliminates those which obviously do not give a comfortable fit. Normally, selection will begin with a half-mask and if a good fit cannot be found, the subject will be asked to test the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are noted; the most comfortable mask is donned and *worn at least five minutes* to assess comfort. All donning and adjustments of the facepieces shall be performed by the test subject without assistance from the test conductor or other person. Assistance in assessing comfort can be given by discussing the points of #6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

- Positioning of mask on nose.
- Room for eye protection.
- Room to talk.
- Positioning mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

- Chin properly placed.
- Strap tension.
- Fit across nose bridge.
- Distance from nose to chin.
- Tendency to slip.
- Self-observation in mirror.

8. The test subject shall conduct the conventional negative and positive-pressure fit checks (e.g., see ANSI Z88.2–1980). Before conducting the negative- or positive-pressure test, the subject shall be told to "seat" the mask by rapidly moving the head from side-to-side and up and down, while taking a few deep breaths.

9. The test subject is now ready for fit testing.

10. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If it has become uncomfortable, another model of respirator shall be tried.

11. The employee shall be given the opportunity to select a different facepiece and be retested if the chosen facepiece becomes increasingly uncomfortable at any time.

C. Fit test. 1. The fit test chamber shall be similar to a clear 55 gallon drum liner suspended inverted over a 2 foot diameter frame, so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

3. After selection, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

4. A copy of the following test exercises and rainbow passage shall be taped to the inside of the test chamber:

Test Exercises

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Inhale on each side. Be certain movement is complete. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Inhale when head is in the full up position (looking toward ceiling). Be certain motions are complete and made about every second. Do not bump the respirator on the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

vi. Jogging in place.

vii. Breathe normally.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

5. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

6. Upon entering the test chamber, the test subject shall be given a 6 inch by 5 inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

7. Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises. This would be an appropriate time to talk with the test subject, to explain the fit test, the importance of cooperation, the purpose for the head exercises, or to demonstrate some of the exercises.

8. Each exercise described in #4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. If the test is failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, and again begin the procedure described in c(4) through c(8) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot pass the fit test described above wearing a half-mask respirator from the available selection, full facepiece models must be used.

12. When a respirator is found that passes the test, the subject breaks the faceseal and takes a breath before exiting the chamber. This is to assure that the reason the test subject is not smelling the IAA is the good fit of the respirator facepiece seal and not olfactory fatigue.

13. When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration buildup in the test chamber during subsequent tests.

14. At least two facepieces shall be selected for the IAA test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

15. Persons who have successfully passed this fit test with a half-mask respirator may be assigned the use of the test respirator in atmospheres with up to 10 times the PEL of airborne asbestos. In atmospheres greater than 10 times, and less than 100 times the PEL (up to 100 ppm), the subject must pass the IAA test using a full face negative pressure respirator.

16. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

17. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

18. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

19. Qualitative fit testing shall be repeated at least every six months.

20. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more.

(2) Significant facial scarring in the area of the facepiece seal.

(3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures.

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of the test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

II. Saccharin Solution Aerosol Protocol

A. Respirator selection. Respirators shall be selected as described in section IB (respirator selection) above, except that each respirator shall be equipped with a particulate filter.

B. Taste threshold screening. 1. An enclosure about head and shoulders shall be used for threshold screening (to determine if the individual can taste saccharin) and for fit testing. The enclosure shall be approximately 12 inches in diameter by 14 inches tall with at least the front clear to allow free movement of the head when a respirator is worn.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to conducting the screening test.

4. During the threshold screening test, the test subject shall don the test enclosure and breathe with mouth open with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinquish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 gram of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C.7 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then is released and allowed to expand fully.

8. Ten squeezes of the nebulizer bulb are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes of the nebulizer bulb are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

10. If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 10), the saccharin fit test cannot be performed on the test subject.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least every four hours.

C. Fit Test. 1. The test subject shall don and adjust the respirator without assistance from any person.

2. The fit test uses the same enclosure described in IIB above.

3. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

4. The test subject shall don the enclosure while wearing the respirator selected in section IB above. This respirator shall be properly adjusted and equipped with a particulate filter.

5. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

6. A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinquish it from the screening test solution nebulizer.

7. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

8. As before, the test subject shall breathe with mouth open and tongue extended.

9. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B.8 through B.10 above).

10. After generation of the aerosol, read the following instructions to the test subject. The test subject shall perform the exercises for one minute each.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular.*

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete. Inhale when head is in the full up position (when looking toward the ceiling). Do not bump the respirator on the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Jogging in place.

vii. Breathe normally.

11. At the beginning of each exercise, the aerosol concentration shall be replenished using one-half the number of squeezes as initially described in C.9.

12. The test subject shall indicate to the test conductor, if at any time during the fit test, the taste of saccharin is detected.

13. If the saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

14. At least two facepieces shall be selected by the saccharin solution aerosol test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used to assign protection factors no higher than ten.

16. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

17. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

18. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

19. Qualitative fit testing shall be repeated at least every six months.

20. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more.

(2) Significant facial scarring in the area of the facepiece seal.

(3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures.

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

III. Irritant Fume Protocol

A. Respirator selection. Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with a high-efficiency cartridge.

B. Fit test. 1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize the subject with the characteristic odor.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive-pressure and negative-pressure fit checks (see ANSI Z88.2 1980). Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part #5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low-pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the faceseal area of the test subject. The person conducting the test shall begin with the tube at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The test subject shall be instructed to do the following exercises while the respirator is being challenged by the smoke. Each exercise shall be performed for one minute.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular.*

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete and made every second. Inhale when head is in the full up position (looking toward ceiling). Do not bump the respirator against the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Repeating it after the test conductor (keeping eyes closed) will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Jogging in place.

vii. Breathe normally.

9. The test subject shall indicate to the test conductor if the irritant smoke is detected. If smoke is detected, the test conductor shall stop the test. In this case, the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test (i.e. without detecting the smoke) shall be given a sensitivity check of smoke from the same tube to determine if the test subject reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B9, B10 of this fit test protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agents.

12. At least two facepieces shall be selected by the irritant fume test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

13. Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL of asbestos.

14. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

15. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

16. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

17. Qualitative fit testing shall be repeated at least every six months.

18. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

C. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

Quantitative Fit Test Procedures

1. General

a. The method applies to the negative-pressure nonpowered air-purifying respirators only.

b. The employer shall assign one individual who shall assume the full responsibility for implementing the respirator quantitative fit test program.

2. Definitions

a. "Quantitative Fit Test" means the measurement of the effectiveness of a respirator seal in excluding the ambient atmosphere. The test is performed by dividing the measured concentration of challenge agent in a test chamber by the measured concentration of the challenge agent inside the respirator facepiece when the normal air purifying element has been replaced by an essentially perfect purifying element.

b. "Challenge Agent" means the air contaminant introduced into a test chamber so that its concentration inside and outside the respirator may be compared.

c. "Test Subject" means the person wearing the respirator for quantitative fit testing.

d. "Normal Standing Position" means standing erect and straight with arms down along the sides and looking straight ahead.

e. "Fit Factor" means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. Apparatus

a. *Instrumentation.* Corn oil, sodium chloride or other appropriate aerosol generation, dilution, and measurement systems shall be used for quantitative fit test.

b. *Test chamber.* The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without distributing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air yet uniform in concentration throughout the chamber.

c. When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

d. The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000.

e. The combination of substitute air-purifying elements (if any), challenge agent, and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of PEL to the challenge agent at any time during the testing process.

f. The sampling port on the test specimen respirator shall be placed and constructed so that there is no detectable leak around the port, a free air flow is allowed into the sampling line at all times and so there is no interference with the fit or performance of the respirator.

g. The test chamber and test set-up shall permit the person administering the test to observe one test subject inside the chamber during the test.

h. The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent constant within a 10 percent variation for the duration of the test.

i. The time lag (interval between an event and its being recorded on the strip chart) of the instrumentation may not exceed 2 seconds.

j. The tubing for the test chamber atmosphere and for the respirator sampling port shall be the same diameter, length and material. It shall be kept as short as possible.

The smallest diameter tubing recommended by the manufacturer shall be used.

k. The exhaust flow from the test chamber shall pass through a high-efficiency filter before release to the room.

l. When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

4. Procedural Requirements

a. The fitting of half-mask respirators should be started with those having multiple sizes and a variety of interchangeable cartridges and canisters such as the MSA Comfo II-M, North M, Survivair M, A–O M, or Scott–M. Use either of the tests outlined below to assure that the facepiece is properly adjusted.

(1) *Positive-pressure test.* With the exhaust port(s) blocked, the negative-pressure of slight inhalation should remain constant for several seconds.

(2) *Negative-pressure test.* With the intake port(s) blocked, the negative-pressure of slight inhalation should remain constant for several seconds.

b. After a facepiece is adjusted, the test subject shall wear the facepiece for at least 5 minutes before conducting a qualitative test by using either of the methods described below and using the exercise regime described in 5.a., b., c., d. and e.

(1) *Isoamyl acetate test.* When using organic vapor cartridges, the test subject who can smell the odor should be unable to detect the odor of isoamyl acetate squirted into the air near the most vulnerable portions of the facepiece seal. In a location which is separated from the test area, the test subject shall be instructed to close her/his eyes during the test period. A combination cartridge or canister with organic vapor and high-efficiency filters shall be used when available for the particular mask being tested. The test subject shall be given an opportunity to smell the odor of isoamyl acetate before the test is conducted.

(2) *Irritant fume test.* When using high-efficiency filters, the test subject should be unable to detect the odor of irritant fume (stannic chloride or titanium tetrachloride ventilation smoke tubes) squirted into the air near the most vulnerable portions of the facepiece seal. The test subject shall be instructed to close her/his eyes during the test period.

c. The test subject may enter the quantitative testing chamber only if she or he has obtained a satisfactory fit as stated in 4.b. of this Appendix.

d. Before the subject enters the test chamber, a reasonably stable challenge agent concentration shall be measured in the test chamber.

e. Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half-mask and 1 percent for a full facepiece.

f. A stable challenge agent concentration shall be obtained prior to the actual start of testing.

g. Respirator restraining straps may not be overtightened for testing. The straps shall be adjusted by the wearer to give a reasonably comfortable fit typical of normal use.

5. Exercise Regime

Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures. The test subject shall perform the following exercises, in the order given, for each independent test.

a. *Normal Breathing (NB).* In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

b. *Deep Breathing (DB).* In the normal standing position the subject shall do deep breathing for at least one minute pausing so as not to hyperventilate.

c. *Turning head side to side (SS).* Standing in place the subject shall slowly turn his/her head from side between the extreme positions to each side. The head shall be held at each extreme position for at least 5 seconds. Perform for at least three complete cycles.

d. *Moving head up and down (UD).* Standing in place, the subject shall slowly move his/her head up and down between the extreme position straight up and the extreme position straight down. The head shall be held at each extreme position for at least 5 seconds. Perform for at least three complete cycles.

e. *Reading (R).* The subject shall read out slowly and loud so as to be heard by the test conductor the 'rainbow passage' at the end of this unit.

f. *Grimace (G).* The test subject shall grimace, smile, frown, and generally contort the face using the facial muscles. Continue for at least 15 seconds.

g. *Bend over and touch toes (B).* The test subject shall bend at the waist and touch toes and return to upright position. Repeat for at least 30 seconds.

h. *Jogging in place (J).* The test subject shall jog in place for at least 30 seconds.

i. *Normal Breathing (NB).* Same as exercise a.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

6. Termination of Test

The test shall be terminated whenever any single peak penetration exceeds 5 percent for halfmasks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

7. Calculation of Fit Factors

a. The fit factor determined by the quantitative fit test equals the average concentration inside the respirator.

b. The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and the end of the test.

c. The average peak concentration of the challenge agent inside the respirator shall be the arithmetic average peak concentrations for each of the nine exercises of the test which are computed as the arithmetic average of the peak concentrations found for each breath during the exercise.

d. The average peak concentration for an exercise may be determined graphically if there is not a great variation in the peak concentrations during a single exercise.

8. Interpretation of Test Results

The fit factor measured by the quantitative fit testing shall be the lowest of the three protection factors resulting from three independent tests.

9. Other Requirements

a. The test subject shall not be permitted to wear a halfmask or full facepiece mask if the minimum fit factor of 100 or 1,000, respectively, cannot be obtained. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

b. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

c. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

d. The test subject shall be given the opportunity to wear the assigned respirator for one week. If the respirator does not provide a satisfactory fit during actual use, the test subject may request another QNFT which shall be performed immediately.

e. A respirator fit factor card shall be issued to the test subject with the following information:

(1) Name.

(2) Date of fit test.

(3) Protection factors obtained through each manufacturer, model, and approval number of respirator tested.

(4) Name and signature of the person that conducted the test.

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

10. Retesting

In addition, because the sealing of the respirator may be affected, quantitative fit testing shall be repeated immediately when the test subject has a:

a. Weight change of 20 pounds or more.

b. Significant facial scarring in the area of the facepiece seal.

c. Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures.

d. Reconstructive or cosmetic surgery, or

e. Any other condition that may interfere with facepiece sealing.

11. Recordkeeping

A summary of all test results shall be maintained for 3 years. The summary shall include:

a. Name of test subject.

b. Date of testing.

c. Name of the test conductor.

d. Fit factors obtained from every respirator tested (indicate manufacturer, model, size and approval number).

Appendix D to Subpart G—Medical Questionnaires—Mandatory

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Appendix E to Subpart G—Interpretation and Classification of Chest Roentgenograms—Mandatory

(a) Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted classification system and recorded on an interpretation form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the boldlines of this form (items 1 through 4) shall be included. This form is not to be submitted to NIOSH.

(b) Roentgenograms shall be interpreted and classified only by a B-reader, a board eligible/certified radiologist, or an experienced physician with known expertise in pneumoconioses.

(c) All interpreters, whenever interpreting chest roentgenograms made under this section, shall have immediately available for reference a complete set of the ILO-U/C International Classification of Radiographs for Pneumoconioses, 1980.

Appendix F to Subpart G—Work Practices and Engineering Controls for Major Asbestos Removal, Renovation, and Demolition Operations—Non-Mandatory

This is a non-mandatory appendix designed to provide guidelines to assist employers in complying with the requirements of § 763.121. Specifically, this appendix describes the equipment, methods, and procedures that should be used in major asbestos removal projects conducted to abate a recognized asbestos hazard or in preparation for building renovation or demolition. These projects require the construction of negative-pressure temporary enclosures to contain the asbestos material and to prevent the exposure of bystanders and other employees at the worksite. Section 763.121(e)(6) of the standard requires that ". . . [W]henever feasible, the employer shall establish negative-pressure enclosures before commencing asbestos removal, demolition, or renovation operations." Employers should also be aware that, when conducting asbestos removal projects, they may be required to comply with certain procedures under the National Emissions Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR part 61, subpart M, of EPA regulations under the Clear Air Act.

Role of Competent Person in Removing Asbestos Materials

Section 763.121(e)(6)(ii) requires that employers involved in asbestos removal, demolition, or renovation operations designate a competent person to:

(1) Set up the enclosure;

(2) Ensure the integrity of the enclosure;

(3) Control entry to and exit from the enclosure;

(4) Supervise all employee exposure monitoring required by this section;

(5) Ensure the use of protective clothing and equipment;

(6) Ensure that employees are trained in the use of engineering controls, work practices, and personal protective equipment;

(7) Ensure the use of hygiene facilities and the observance of proper decontamination procedures; and

(8) Ensure that engineering controls are functioning properly.

The competent person will generally be a Certified Industrial Hygienist, an industrial hygienist with training and experience in the handling of asbestos, or a person who has such training and experience as a result of on-the-job training and experience.

Equipment, Methods and Procedures

Construction of a negative-pressure enclosure is a simple but time-consuming process that requires careful preparation and execution; however, if the procedures below are followed, employers should be assured of achieving a temporary barricade that will protect employees and others outside the enclosure from exposure to asbestos and minimize to the extent possible the exposure of asbestos workers inside the barrier as well.

The equipment and materials required to construct these barriers are readily available and easily installed and used. In addition to an enclosure around the removal site, the standard requires employers to provide hygiene facilities that ensure that their asbestos contaminated employees do not leave the work site with asbestos on their persons or clothing; the construction of these facilities is also described below. The steps in the process include:

(1) Planning the removal project;

(2) Procuring the necessary materials and equipment;

(3) Preparing the work area;

(4) Removing the asbestos-containing material;

(5) Cleaning the work area; and

(6) Disposing of the asbestos-containing waste.

(1) *Planning the Removal Project*

The planning of an asbestos removal project is critical to completing the project safely and cost-effectively. A written asbestos removal plan should be prepared that describes the equipment and procedures that will be used throughout the project. The asbestos abatement plan will aid not only in executing the project but also in complying with the reporting requirements of the USEPA asbestos NESHAP regulations for demolition or renovation operations (40 CFR 61, subpart M, § 61.145, 61.146, or 61.147), which call for specific information such as a description of control methods and control equipment to be used and the disposal sites the employer proposes to use to dispose of the asbestos containing materials.

The asbestos abatement plan should contain the following information:

- A physical description of the work area;
- A description of the approximate amount of material to be removed;
- A schedule for turning off and sealing existing ventilation systems;
- Personnel hygiene procedures;
- Labeling procedures;
- A description of personal protective equipment and clothing to be worn by employees;
- A description of the local exhaust ventilation systems to be used;
- A description of work practices to be observed by employees;
- A description of the methods to be used to remove the asbestos-containing material;
- The wetting agent to be used;
- A description of the sealant to be used at the end of the project;
- An air monitoring plan;
- A description of the method to be used to transport waste material; and
- The location of the dump site.

(2) *Procuring Materials and Equipment Necessary for Asbestos Removal*

Although individual asbestos removal projects vary in terms of the equipment required to accomplish the removal of the material, some equipment and materials are common to most asbestos removal operations. Equipment and materials that should be available at the beginning of each project are: (1) rolls of polyethylene sheeting; (2) rolls of duct tape or plastic tape; (3) High Efficiency Particulate Air (HEPA) filtered vacuum(s); (4) HEPA-filtered portable ventilation system(s); (5) a wetting agent; (6) an airless sprayer; (7) a portable shower unit; (8) appropriate respirators; (9) disposable coveralls; (10) signs and labels; (11) pre-printed disposal bags; and (12) a manometer or pressure gauge.

Rolls of Polyethylene Plastic and Tape. Rolls of polyethylene plastic (6 mil or more in thickness) should be available to construct the asbestos removal enclosure and to seal windows, doors, ventilation systems, wall penetrations, and ceilings and floors in the work area. Duct tape or plastic tape should be used to seal the edges of the plastic and to seal any holes in the plastic enclosure. Polyethylene sheeting can be purchased in rolls up to 12–20 feet in width and up to 100 feet in length.

HEPA-Filtered Vacuum. A HEPA-filtered vacuum is essential for cleaning the work area after the asbestos has been removed. Such vacuums are designed to be used with a HEPA filter, which is capable of removing 99.99 percent of the asbestos particles 0.3 microns or larger from the air. Various sizes and capacities of HEPA vacuums are available that range in capacity from 5.25 gallons to 17 gallons. These models are portable, and have long hoses capable of reaching out-of-the-way places, such as areas above ceiling tiles, behind pipes, etc.

Exhaust Air Filtration System. A portable ventilation system is necessary to create a negative pressure within the asbestos removal enclosure. Such units are equipped

with a HEPA filter and are designed to exhaust and clean the air inside the enclosure before exhausting it to the outside of the enclosure such systems are available from several manufacturers. Ventilation units are available that range in capacity from 600 cubic feet per minute (CFM) to 1,700 CFM. Typical specifications for these filters specify removal of 99.99 percent for particles of 0.3 microns or larger. The number and capacity of units required to ventilate an enclosure depend on the size of the area to be ventilated.

Wetting Agents. Wetting agents (surfactants) are added to water (known as "amended water") to prepare for wetting asbestos-containing materials; amended water penetrates more effectively than plain water and permits more thorough soaking of the asbestos-containing materials. Wetting the asbestos-containing material reduces the number of fibers that will break free and become airborne when the asbestos-containing material is handled or otherwise disturbed. Asbestos-containing materials should be thoroughly soaked before removal is attempted; the dislodged material should feel spongy to the touch. Wetting agents are generally prepared by mixing 1 to 3 ounces of wetting agent to 5 gallons of water.

One type of asbestos, amosite, is relatively resistant to soaking, either with plain or amended water. The work practices of choice when working with amosite containing material are to soak the material as much as possible and then to bag it for disposal immediately after removal, so that the material has no time to dry and be ground into smaller particles that are more likely to liberate airborne asbestos.

In a very limited number of situations, it may not be possible to wet the asbestos-containing material before removing it. Examples of such rare situations are: (1) Removal of asbestos material from a "live" electrical box that was oversprayed with the material when the rest of the area was sprayed with an asbestos-containing coating; and (2) removal of asbestos-containing insulation from a live steam pipe. In both of these situations, the preferred approach would be to turn off the electricity or steam, respectively, to permit wet removal methods to be used. However, where removal work must be performed during working hours, or when normal operations cannot be disrupted, the asbestos-containing material must be removed dry. Immediate bagging is then the only method of minimizing the amount of airborne asbestos generated.

Airless Sprayer. Airless sprayers are used to apply amended water to asbestos-containing materials. Airless sprayers allow amended water to be applied in a fine spray that minimizes the release of asbestos fibers by reducing the impact of the spray on the material to be removed. Airless sprayers are inexpensive and readily available.

Portable Shower. Unless the site has available a permanent shower facility that is contiguous to the removal area, a portable shower system is necesssary to permit employees to clean themselves after exposure to asbestos and to remove any asbestos contamination from their hair and bodies. Taking a shower prevents employees from leaving the work area with asbestos on themselves and thus prevents the spread of asbestos contamination to areas outside the asbestos removal area. This measure also protects members of the families of asbestos workers from possible exposure to asbestos. Showers should be supplied with warm water and a drain. A shower water filtration system to filter asbestos fibers from the shower water is recommended. Portable shower units are readily available, inexpensive, and easy to install and transport.

Respirators. Employees involved in asbestos removal projects should be provided with appropriate NIOSH-approved respirators. Selection of the appropriate respirator should be based on the concentration of asbestos fibers in the work area. If the concentration of asbestos fibers is unknown, employees should be provided with respirators that will provide protection against the highest concentration of asbestos fibers that can reasonably be expected to exist in the work area. At a minimum, employees should wear half-mask dual-filter cartridge respirators. Disposable face mask respirators (single-use) should not be used to protect employers from exposure to asbestos fibers.

Disposable Coveralls. Employees involved in asbestos removal operations should be provided with disposable impervious coveralls that are equipped with head and foot covers. Such coveralls are typically made of spun-bonded polyolefin. The coverall has a zipper front and elastic wrists and ankles.

Signs and Labels. Before work begins, a supply of signs to demarcate the entrance to the work area should be obtained. Signs are available that have the wording required by the final OSHA standard. The required labels are also commercially available as press-on labels and pre-printed on the 6-mil polyethylene plastic bags used to dispose of asbestos-containing waste material.

(3) *Preparing the Work Area*

Preparation for constructing negative-pressure enclosures should begin with the removal of all movable objects from the work area, e.g., desks, chairs, rugs, and light fixtures, to ensure that these objects do not become contaminated with asbestos. When movable objects are contaminated or are suspected of being contaminated, they should be vacuumed with a HEPA vacuum and cleaned with amended water, unless they are made of material that will be damaged by the wetting agent; wiping with plain water is recommend in those cases where amended water will damage the object. Before the asbestos removal work begins, objects that cannot be removed from the work area should be covered with a 6-mil-thick polyethylene plastic sheeting that is securely taped with duct tape or plastic tape to achieve an air-tight seal around the object.

A. Constructing the Enclosure

When all objects have either been removed from the work area or covered with plastic, all penetrations of the floor, walls, and ceiling should be sealed with 6-mil polyethylene plastic and tape to prevent airborne asbestos from escaping into areas outside the work area, or from lodging in cracks around the penetrations. Penetrations that require sealing are typically found around electrical conduits, telephone wires, and water supply and drain pipes. A single entrance to be used for access and egress to the work area should be selected, and all other doors and windows should be sealed with tape or be covered with 6-mil polyethylene plastic sheeting and securely taped. Covering windows and unnecessary doors with a layer of polyethylene before covering the walls provides a second layer of protection and saves time in installation because it reduces the number of edges that must be cut and taped. All other surfaces such as support columns, ledges, pipes, and other surfaces should also be covered with polyethylene plastic sheeting and taped before the walls themselves are completely covered with sheeting.

Next a thin layer of spray adhesive should be sprayed along the top of all walls surrounding the enclosed work area, close to the wall-ceiling interface, and a layer of polyethylene plastic sheeting should be stuck to this adhesive and taped. The entire inside surfaces of all wall areas are covered in this manner, and the sheeting over the walls is extended across the floor area until it meets in the center of the area, where it is taped to form a single layer of material encasing the entire room except for the ceiling. A final layer of plastic sheeting is then laid across the plastic-covered floor area and up the walls to a level of 2 feet or so; this layer provides a second protective layer of plastic sheeting over the floor, which can then be removed and disposed of easily after the asbestos-containing material that has dropped to the floor has been bagged and removed.

B. Establishing Negative Pressure Within the Enclosure

After construction of the enclosure is completed, a ventilation system(s) should be installed to create a negative pressure of -0.02 inches of water within the enclosure with respect to the area outside the enclosure. Such ventilation systems must be equipped with HEPA filters to prevent the release of asbestos fibers to the environment outside the enclosure and should be operated continuously until the final cleanup is completed and the results of final air samples are received from the laboratory.

The ventilation systems should exhaust the HEPA-filtered clean air outside the building in which the asbestos removal, demolition, or renovation is taking place. If access to the outside is not available, the ventilation system can exhaust the HEPA-filtered asbestos-free air to an area within the building that is as far away as possible from the enclosure. Care should be taken to ensure that the clean air is released either to an asbestos-free area or in such a way as not to disturb any asbestos-containing materials.

A manometer or pressure gauge for measuring the negative pressure within the enclosure should be installed and should be monitored frequently throughout all work shifts during which asbestos removal, demolition, or renovation takes place to

maintain the negative pressure. For larger projects, differential pressure may be continuously recorded which provides a permanent record to demonstrate the integrity of the enclosure during abatement.

C. Ensuring the Integrity of the Enclosures

Ensuring the integrity of the enclosure is accomplished by inspecting the enclosure before asbestos removal work begins and prior to each work shift throughout the entire period work is being conducted in the enclosure. The inspection should be conducted by locating all areas where air might escape from the enclosure; this is best accomplished by running a hand over all seams in the plastic enclosure to ensure that no seams are ripped and the tape is securely in place.

The competent person should also ensure that all unauthorized personnel do not enter the enclosure and that all employees and other personnel who enter the enclosure have the proper protective clothing and equipment. He or she should also ensure that all employees and other personnel who enter the enclosure use the hygiene facilities and observe the proper decontamination procedures (described in this Appendix).

The competent person also should ensure that negative pressure is always maintained in the enclosure. This can be done by measuring the pressure by manometers or pressure gauges.

D. Building Hygiene Facilities

Paragraph (j) of the final standard mandates that employers involved in asbestos removal, demolition, or renovation operations provide their employees with hygiene facilities to be used to decontaminate asbestos-exposed workers, equipment, and clothing before such employees leave the work area. These decontamination facilities consist of:

(1) A clean change room.

(2) A shower.

(3) An equipment room.

The clean change room is an area in which employees remove their street clothes and don their respirators and disposable protective clothing. The clean room should have hooks on the wall or be equipped with lockers for the storage of workers' clothing and personal articles. Extra disposable coveralls and towels can also be stored in the clean change room.

The shower should be contiguous with both the clean and dirty change room and should be used by all workers leaving the work area. The shower should also be used to clean asbestos-contaminated equipment and materials, such as the outsides of asbestos waste bags and hand tools used in the removal process.

The equipment room (also called the dirty change room) is the area where workers remove their protective coveralls and where equipment that is to be used in the work area can be stored. The equipment room should be lined with 6-mil-thick polyethylene plastic sheeting in the same way as was done in the work area enclosure. Two layers of 6-mil polyethylene plastic sheeting that are not taped together from a double flap or barrier between the equipment room and the work area and between the shower and the clean change room.

When feasible, the clean change room, shower, and equipment room should be contiguous and adjacent to the negative-pressure enclosure surrounding the removal area. In the overwhelming number of cases, hygiene facilities can be built contiguous to the negative-pressure enclosure. In some cases, however, hygiene facilities may have to be located on another floor of the building where removal of asbestos-containing materials is taking place. In these instances, the hygiene facilities can in effect be made to be contiguous to the work area by constructing a polythylene plastic "tunnel" from the work area to the hygiene facilities.

Such a tunnel can be made even in cases where the hygiene facilities are located several floors above or below the work area; the tunnel begins with a double flap door at the enclosure, extends through the exit from the floor, continues down the necessary number of flights of stairs and goes through a double-flap entrance to the hygiene facilities, which have been prepared as described above. The tunnel is constructed of 2-inch by 4-inch lumber or aluminum struts and covered with 6-mil-thick polyethylene plastic sheeting.

In the rare instances when there is not enough space to permit any hygiene facilities to be built at the work site, employees should be directed to change into a clean disposable worksuit immediately after exiting the enclosure (without removing their respirators) and to proceed immediately to the shower. Alternatively, employees could be directed to vacuum their disposable coveralls with a HEPA-filtered vacuum before proceeding to a shower located a distance from the enclosure.

The clean room, shower, and equipment room must be sealed completely to ensure that the sole source of air flow through these areas originates from uncontaminated areas outside the asbestos removal, demolition, or renovation enclosure. The shower must be drained properly after each use to ensure that contaminated water is not released to uncontaminated areas. If waste water is inadvertently released, it should be cleaned up as soon as possible to prevent any asbestos in the water from drying and becoming airborne in areas outside the work area.

(4) *Removing the Asbestos-Containing Material*

All asbestos removal, renovation, and demolition operations should have a program for monitoring the concentration of airborne asbestos and employee exposures to asbestos. At least two samples should be collected outside the work area, one at the entrance to the clean change room and one at the exhaust of the portable ventilation system. In addition, several breathing zone samples should be collected from those workers who can reasonably be expected to have the highest potential exposure to asbestos.

Proper work practices are necessary during asbestos removal, demolition, and renovation to ensure that the concentration of asbestos fibers inside the enclosure remains as low as possible. One of the most important work practices is to wet the asbestos-containing material before it is disturbed. After the asbestos-containing material is thoroughly wetted, it should be removed by scraping (as in the case of sprayed-on or troweled-on ceiling material) or removed by cutting the metal bands or wire mesh that support the asbestos-containing material on boilers or pipes. Any residue that remains on the surface of the object from which asbestos is being removed should be wire brushed and wet wiped.

A checklist is one of the most effective methods of ensuring adequate surveillance of the integrity of the asbestos removal enclosure. Such a checklist is shown in Table A. Filling out the checklist at the beginning of each shift in which asbestos removal is being performed will serve to document that all the necessary precautions will be taken during the asbestos removal work. The checklist contains entries for ensuring that:

- The work area enclosure is complete;
- The negative-pressure system is in operation;
- Necessary signs and labels are used;
- Appropriate work practices are used;
- Necessary protective clothing and equipment are used; and
- Appropriate decontamination procedures are being followed.

Table A.—Checklist

Asbestos Removal, Rennovation, and Demolition Checklist

Date: _____

Supervisor: _____

Location: _____

Project No.: _____

Work Area (sq. ft.): _____

	Yes	No
I. Work Site Barrier		
Floor covered	_____	_____
Walls covered	_____	_____
Area ventilation off	_____	_____
All edges sealed	_____	_____
Penetrations sealed	_____	_____
Entry curtains	_____	_____
II. Negative Air Pressure		
HEPA Vac	_____	_____
Ventilation system	_____	_____
Constant operation	_____	_____
Negative pressure achieved	_____	_____
III. Signs		
Work area entrance	_____	_____
Bags labeled	_____	_____
IV. Work Practices		
Removed material promptly bagged	_____	_____
Material worked wet	_____	_____
HEPA vacuum used	_____	_____
No smoking	_____	_____
No eating, drinking	_____	_____
Work area cleaned after completion	_____	_____
Personnel decontaminated each departure		
V. Protective Equipment		
Disposable clothing used one time	_____	_____
Proper NIOSH-approved respirators	_____	_____
VI. Showers		
On site	_____	_____
Functioning	_____	_____
Soap and towels	_____	_____
Used by all personnel	_____	_____

Bagging asbestos waste material promptly after its removal is another work practice control that is effective in reducing the airborne concentration of asbestos within the enclosure. Whenever possible, the asbestos should be removed and placed directly into bags for disposal rather than dropping the material to the floor and picking up all of the material when the removal is complete. If a significant amount of time elapses between the time that the material is removed and the time it is bagged, the asbestos material is likely to dry out and generate asbestos-laden dust when it is disturbed by people working within the enclosure. Any asbestos-contaminated supplies and equipment that cannot be decontaminated should be disposed of in pre-labeled bags; items in this category include plastic sheeting, disposable work clothing, respirator cartridges, and contaminated wash water.

(5) *Cleaning the Work Area*

After all of the asbestos-containing material is removed and bagged, the entire work area should be cleaned until it is free of all visible asbestos dust. All surfaces from which asbestos has been removed should be cleaned by wire brushing the surfaces, HEPA vacuuming these surfaces, and wiping them with amended water. The inside of the plastic enclosure should be vacuumed with a HEPA vacuum and wet wiped until there is no visible dust in the enclosure. Particular attention should be given to small horizontal surfaces such as pipes, electrical conduits, lights, and support tracks for drop ceilings. All such surfaces should be free of visible dust before the final air samples are collected.

For areas less than 160 square feet or 260 linear feet, a minimum of 5 area air samples must be collected. These samples may be analyzed by phase contrast microscopy. Each sample must have an individual asbestos concentration less than 0.01 f/cc, as determined by the use of NIOSH Method 7400, before the worksite is considered clean.

For areas less than 160 square feet or 260 linear feet, air samples may be analyzed by phase contrast microscopy using NIOSH method 7400, or by transmission electron microscopy (TEM) following the method contained in 40 CFR part 763, Appendix to subpart E and the procedure described below in paragraphs 1, 2, and 3.

1. For areas of any size, a worksite will be considered clean when the average concentration of asbestos of five air samples collected within the affected functional space and analyzed by the TEM method contained in 40 CFR part 763, Appendix A to subpart E, is not statistically significantly different, as determined by the Z-test calculation found in 40 CFR part 763, from the average asbestos concentration of five air samples collected at the same time outside the building in uncontaminated air space and analyzed in the same manner, sequentially, and the average asbestos concentration of the three field blanks described in 40 CFR part 763, Appendix A to subpart E is below the filter background level, as defined in Appendix A to subpart E, of 70 structures per square millimeter.

2. For areas of any size, a worksite will also be considered clean when the volume of air drawn for each of the five samples collected within the worksite is equal to or greater than 1,199 liters of air for a 25mm filter or equal to or greater than 2,799 liters of air for a 37mm filter, and the average concentration of asbestos as analyzed by the transmission electron microscope method in 40 CFR part 763, Appendix A to subpart E, for the five air samples does not exceed the filter background level, as defined in 40 CFR part 763, Appendix A to subpart E, of 70 structures per square millimeters. If the average concentration of asbestos of the five air samples within the affected functional space exceeds 70 structures per millimeter, or if the volume of air in each of the samples is less than 1,199 liters of air for a 25mm filter or less than 2,799 liters of air for a 37mm filter, the action shall be considered complete only when the requirements of paragraph 1 are met.

3. If the TEM method is used, TEM laboratories accredited in the National Institute of Standards & Technology's National Voluntary Laboratory Accreditation Program must be used to perform the TEM analyses.

A clearance checklist is an effective method of ensuring that all surfaces are adequately cleaned and the enclosure is ready to be dismantled. Table B shows a checklist that can be used during the final inspection phase of asbestos abatement, removal, or renovation operations.

Table B.—Clearance Checklist

Final Inspection of Asbestos Removal, Renovation, and Demolition Projects

Date: _____

Project: _____

Location: _____

Building: _____

CHECKLIST

Residual dust on:

	Yes	No
a. Floor	_____	_____
b. Horizontal surfaces	_____	_____
c. Pipes	_____	_____
d. Ventilation equipment	_____	_____
e. Ducts	_____	_____
h. Register	_____	_____
i. Lights	_____	_____

FIELD NOTES:

Record any problems encountered here.

_____

_____

_____

_____

_____

_____

_____

FINAL AIR SAMPLE RESULTS:

Appendix G to Subpart G—Work Practices and Engineering Controls for Small-Scale, Short-Duration Operations Maintenance and Repair (O&M) Activities Involving Asbestos - Non-Mandatory

This Appendix formerly appeared as Appendix B to Subpart E - Asbestos-Containing Materials in Schools - and now appears as Appendix G to Subpart G of the Asbestos Worker Protection Rule (WPR).

This appendix has been moved from the Asbestos in Schools Rule to the WPR to provide work practices guidance to employers of all State and local government employees (not just school employees) who perform small-scale, short-duration operations, including operations, maintenance, and repair (O&M) activities involving asbestos-containing material. Work practices and engineering controls outlined in this Appendix are intended to provide comparable protection to public employees performing small-scale operations as that provided to private sector workers under the OSHA Asbestos Construction Standard, or under OSHA-approved State plans.

This Appendix is not mandatory, in that employers subject to EPA's Worker Protection Rule may choose to comply with all the requirements of 40 CFR 763.121 for achieving employee exposures below the rule's action level or PEL. To be exempted from the requirements for small-scale, short-duration operations in § 763.121(e)(6), (j)(1)(i)(B), and (j)(2)(i), an employer shall comply with the provisions of this appendix in order to reduce employee exposure to asbestos to a level below the action level of 0.1 f/cc.

Definition of "Small-Scale, Short-Duration Operations"

For the purposes of this appendix, small-scale, short-duration renovation and maintenance activities are tasks such as, but not limited to:

- Removal of asbestos-containing insulation on pipes;
- Removal of small quantities of asbestos-containing insulation on beams or above ceilings;
- Replacement of an asbestos-containing gasket on a valve;
- Installation or removal of a small section of drywall;
- Installation of electrical conduits through or proximate to asbestos-containing materials.

In its 1986 asbestos standard for the construction industry, OSHA concluded that the use of certain engineering and work practice controls is capable of reducing employee exposures to asbestos to levels below the standard's action level (0.1 f/cm^3). (See 51 FR 22714, June 20, 1986.) Several controls and work practices, used either singly or in combination, can be employed effectively to reduce asbestos exposures during small maintenance and renovation operations. These include:

1. Wet methods.
2. Removal methods.
   i. Use of glove bags.
   ii. Use of minienclosures.
   iii. Removal of entire asbestos insulated pipes or structures.
3. Enclosure of asbestos materials.
4. Maintenance programs.

This appendix describes some of these controls and work practices in detail.

Preparation of the Area Before Operations, Maintenance, and Repair (O&M) Activities

The first step in preparing to perform a small-scale, short-duration O&M task, regardless of the method that will be used, is the removal from the work area of all objects that are movable to protect them from asbestos contamination. Objects that cannot be removed must be covered completely with 6-mil-thick polyethylene plastic sheeting before the task begins. If objects have already been contaminated, they should be thoroughly cleaned with a High Efficiency Particulate Air (HEPA) filtered vacuum or be wet-wiped before they are removed from the work area or completely encased by the plastic sheets.

Wet methods. Whenever feasible, and regardless of the abatement method to be used (e.g., removal, enclosure, use of glove bags), wet methods must be used during small-scale, short-duration maintenance and renovation activities that involve disturbing asbestos-containing materials. Handling asbestos materials wet is one of the most reliable methods of ensuring that asbestos fibers do not become airborne, and this practice should therefore be used whenever feasible. Wet methods can be used in the great majority of workplace situations. Only in cases where asbestos work must be performed on live electrical equipment, on live steam lines, or in other areas where water will seriously damage materials or equipment may dry removal be performed. Amended water or another wetting agent should be applied by means of an airless sprayer to minimize the extent to which the asbestos-containing material is disturbed.

Asbestos-containing material should be wetted from the initiation of the maintenance or renovation operation, and wetting agents should be used continually throughout the work period to ensure that any dry asbestos-containing material exposed in the course of the work is wet and remains wet until final disposal.

Removal of small amount of asbestos-containing materials. Several methods can be used to remove small amounts of asbestos-containing materials during small-scale, short-duration renovation or maintenance tasks. These include the use of glove bags, the removal of an entire asbestos-covered pipe or structure, and the construction of minienclosures. The procedures that employers must use for each of these operations if they wish to avail themselves of the rule's exemptions are described in the following sections.

i. *Glove bags.* As discussed in the 1986 OSHA-asbestos standard for the construction industry, Summary and Explanation section of the preamble for paragraph (g), *Methods of Compliance*, evidence in the record indicated that the use of glove bags to enclose the work area during small-scale, short-duration maintenance or renovation activities will result in employee exposures to asbestos that are below the rule's action level of 0.1 f/cc. This appendix provides requirements for glove-bag procedures to be followed by employers wishing to avail themselves of the rule's exemption for each activity. OSHA has determined that the use of these procedures will reduce the 8–hour time weighted average (TWA) exposure of employees involved in these work operations to levels below the action level and will thus provide a degree of employee protection equivalent to that provided by compliance with all provisions of the rule.

Glove bag installation. Glove bags are approximately 40-inch-wide times 64-inch-long bags fitted with arms through which the work can be performed. When properly installed and used, they permit workers to remain completely isolated from the asbestos material removed or replaced inside the bag. Glove bags can thus provide a flexible, easily installed, and quickly dismantled temporary small work area enclosure that is ideal for small-scale asbestos renovation or maintenance jobs. These bags are single-use control devices that are disposed of at the end of each job. The bags are made of transparent 6-mil-thick polyethylene plastic with arms of spun-bonded polyolefin material (the same material used to make the disposable protective suits used in major asbestos removal, renovation, and demolition operations and in protective gloves). Glove bags are readily available from safety supply stores or specialty asbestos removal supply houses. Glove bags come pre-labelled with the asbestos warning label prescribed by OSHA and EPA for bags used to dispose of asbestos waste.

Glove bag equipment and supplies. Supplies and materials that are necessary to use glove bags effectively include:

1. Tape to seal glove bag to the area from which asbestos is to be removed.
2. Amended water or other wetting agents.
3. An airless sprayer for the application of the wetting agent.
4. Bridging encapsulant (a paste-like substance for coating asbestos) to seal the rough edges of any asbestos-containing materials that remain within the glove bag at the points of attachment after the rest of the asbestos has been removed.
5. Tools such as razor knives, nips, and wire brushes (or other tools suitable for cutting wires, etc.).
6. A HEPA filter-equipped vacuum for evacuating the glove bag (to minimize the release of asbestos fibers) during removal of the bag from the work area and for cleaning any material that may have escaped during the installation of the glove bag.
7. HEPA-equipped dual-cartridge or more protective respirators for use by the employees involved in the removal of asbestos with the glove bag.

Glove bag work practices. The proper use of glove bags requires the following steps:

1. Glove bags must be installed so that they completely cover the pipe or other structure

where asbestos work is to be done. Glove bags are installed by cutting the sides of the glove bag to fit the size of the pipe from which asbestos is to be removed. The glove bag is attached to the pipe by folding the open edges together and securely sealing them with tape. All openings in the glove bag must be sealed with duct tape or equivalent material. The bottom seam of the glove bag must also be sealed with duct tape or equivalent to prevent any leakage from the bag that may result from a defect in the bottom seam.

2. The employee who is performing the asbestos removal with the glove bag must don at least a half mask dual-cartridge HEPA-equipped respirator; respirators should be worn by employees who are in close contact with the glove bag and who may thus be exposed as a result of small gaps in the seams of the bag or holes punched through the bag by a razor knife or a piece of wire mesh.

3. The removed asbestos material from the pipe or other surface that has fallen into the enclosed bag must be thoroughly wetted with a wetting agent (applied with an airless sprayer through the precut port provided in most gloves bags or applied through a small hole in the bag).

4. Once the asbestos material has been thoroughly wetted, it can be removed from the pipe, beam, or other surface. The choice of tool to use to remove the asbestos-containing material depends on the type of material to be removed. Asbestos-containing materials are generally covered with painted canvas and/or wire mesh. Painted canvas can be cut with a razor knife and peeled away from the asbestos-containing material underneath. Once the canvas has been peeled away, the asbestos-containing material underneath may be dry, in which case it should be resprayed with a wetting agent to ensure that it generates as little dust as possible when removed. If the asbestos-containing material is covered with wire mesh, the mesh should be cut with nips, tin snips, or other appropriate tool and removed. A wetting agent must then be used to spray any layer of dry material that is exposed beneath the mesh, the surface of the stripped underlying structure, and the inside of the glove bag.

5. After removal of the layer of asbestos-containing material, the pipe or surface from which asbestos has been removed must be thoroughly cleaned with a wire brush and wet-wiped with a wetting agent until no traces of the asbestos-containing material can be seen.

6. Any asbestos-containing insulation edges that have been exposed as a result of the removal or maintenance activity must be encapsulated with bridging encapsulant to ensure that the edges do not release asbestos fibers to the atmosphere after the glove bag has been removed.

7. When the asbestos removal and encapsulation have been completed, a vacuum hose from a HEPA filtered vacuum must be inserted into the glove bag through the port to remove any air in the bag that may contain asbestos fibers. When the air has been removed from the bag, the bag should be squeezed tightly (as close to the top as possible), twisted, and sealed with tape, to keep the asbestos materials safely in the bottom of the bag. The HEPA vacuum can then be removed from the bag and the glove bag itself can be removed from the work area to be disposed of properly.

ii. *Minienclosures.* In some instances, such as removal of asbestos from a small ventilation system or from a short length of duct, a glove bag may not be either large enough or of the proper shape to enclose the work area. In such cases, a minienclosure can be built around the area where small-scale, short-duration asbestos maintenance or renovation work is to be performed. Such enclosures should be constructed of 6-mil-thick polyethylene plastic sheeting and can be small enough to restrict entry to the asbestos work area to one worker.

For example, a minienclosure can be built in a small utility closet when asbestos-containing duct covering is to be removed. The enclosure is constructed by:

1. Affixing plastic sheeting to the walls with spray adhesive and tape.

2. Covering the floor with plastic and sealing the plastic covering the floor to the plastic on the walls.

3. Sealing any penetrations such as pipes or electrical conducts with tape; and

4. Constructing a small change room (approximately 3 feet square) made of 6-mil-thick polyethylene plastic supported by 2–inch by 4–inch lumber (the plastic should be attached to the lumber supports with staples or spray adhesive and tape).

The change room should be contiguous to the minienclosure, and is necessary to allow the worker to vacuum off his protective coveralls and remove them before leaving the work area. While inside minienclosure, the worker should wear spun-bonded polyolefin disposable coveralls and use the appropriate HEPA-filtered dual-cartridge or more protective respiratory protection.

The advantages of minienclosures are that they limit the spread of asbestos contamination, reduce the potential exposure of bystanders and other workers who may be working in adjacent areas, and are quick and easy to install. The disadvantage of minienclosures is that they may be too small to contain the equipment necessary to create a negative pressure within the enclosure; however the double layer of plastic sheeting will serve to restrict the release of asbestos fibers to the area outside the enclosure.

Removal of entire asbestos insulated pipes or structures. When pipes are insulated with asbestos-containing materials, removal of the entire pipe may be more protective, easier, and more cost-effective than stripping the asbestos insulation from the pipe. Before such a pipe is cut, the asbestos-containing insulation must be wrapped with 6-mil polyethylene plastic and securely sealed with duct tape or equivalent. This plastic covering will prevent asbestos fibers from becoming airborne as a result of the vibration created by the power saws used to cut the pipe. If possible, the pipes should be cut at locations that are not insulated to avoid disturbing the asbestos. If a pipe is completely insulated with asbestos-containing materials, small sections should be stripped using the glove-bag method described above before the pipe is cut at the stripped sections.

Enclosure. The decision to enclose rather than remove asbestos-containing material from an area depends on the employer's preference, i.e., for removal or containment. Employers consider such factors as cost effectiveness, the physical configuration of the work area, and the amount of traffic in the area when determining which abatement method to use.

If the employer chooses to enclose the structure rather than to remove the asbestos-containing material insulating it, a solid structure (airtight walls and ceilings) must be built around the asbestos covered pipe or structure to prevent the release of asbestos-containing materials into the area beyond the enclosure and to prevent disturbing these materials by casual contact during future maintenance operations.

Such a permanent (i.e., for the life of the building) enclosure should be built of new construction materials and should be impact resistant and airtight. Enclosure walls should be made of tongue-and-groove boards, boards with spine joints, or gypsum boards having taped seams. The underlying structure must be able to support the weight of the enclosure. (Suspended ceilings with laid-in panels do not provide airtight enclosures and should not be used to enclose structures covered with asbestos-containing materials.) All joints between the walls and ceiling of the enclosure should be caulked to prevent the escape of asbestos fibers. During the installation of enclosures, tools that are used (such as drills or rivet tools) should be equipped with HEPA-filtered vacuums. Before constructing the enclosure, all electrical conduits, telephone lines, recessed lights, and pipes in the area to be enclosed should be moved to ensure that the enclosure will not have to be re-opened later for routine or emergency maintenance. If such lights or other equipment cannot be moved to a new location for logistic reasons, or if moving them will disturb the asbestos-containing materials, removal rather than enclosure of the asbestos-containing materials is the appropriate control method to use.

Maintenance program. An asbestos maintenance program must be initiated in all facilities that have asbestos-containing materials. Such a program should include:

1. Development of an inventory of all asbestos-containing materials in the facility.

2. Periodic examination of all asbestos-containing materials to detect deterioration.

3. Written procedures for handling asbestos materials during the performance of small-scale, short-duration maintenance and renovation activities.

4. Written procedures for asbestos disposal.

5. Written procedures for dealing with asbestos-related emergencies.

Members of the building's maintenance engineering staff (electricians, heating/air conditioning engineers, plumbers, etc.) who may be required to handle asbestos-containing materials should be trained in safe procedures. Such training should include at a minimum:

1. Information regarding types of asbestos-containing materials and its various uses and forms.

2. Information on the health effects associated with asbestos exposure.

3. Descriptions of the proper methods of handling asbestos-containing materials.

4. Information on the use of HEPA-equipped dual-cartridge respirators and other personal protection during maintenance activities.

Prohibited activities. The training program for the maintenance engineering staff should describe methods of handling asbestos-containing materials as well as routine maintenance activities that are prohibited when asbestos-containing materials are involved. For example, maintenance staff employees should be instructed:

1. *Not* to drill holes in asbestos-containing materials.

2. *Not* to hang plants or pictures on structures covered with asbestos-containing materials.

3. *Not* to sand asbestos-containing floor tile.

4. *Not* to damage asbestos-containing materials while moving furniture or other objects.

5. *Not* to install curtains, drapes, or dividers in such a way that they damage asbestos-containing materials.

6. *Not* to dust floors, ceilings, moldings or other surfaces in asbestos-contaminated environments with a dry brush or sweep with a dry broom.

7. *Not* to use an ordinary vacuum to clean up asbestos-containing debris.

8. *Not* to remove ceiling tiles below asbestos-containing materials without wearing the proper respiratory protection, clearing the area of other people, and observing asbestos removal waste disposal procedures.

9. *Not* to remove ventilation system filters dry.

10. *Not* to shake ventilation system filters.

Appendix H to Subpart G—Substance Technical Information for Asbestos— Non-Mandatory

I. Substance Identification

A. Substance: "Asbestos" is the name of a class of magnesium-silicate minerals that occur in fibrous form. Minerals that are included in this group are chrysotile, crocidolite, amosite, anthophyllite asbestos, tremolite asbestos, and actinolite asbestos.

B. Asbestos is used in the manufacture of heat-resistant clothing, automotive brake and clutch linings, and a variety of building materials including floor tiles, roofing felts, ceiling tiles, asbestos-cement pipe and sheet, and fire-resistant drywall. Asbestos is also present in pipe and boiler insulation materials, and in sprayed-on materials located on beams, in crawlspaces, and between walls.

C. The potential for asbestos from an asbestos-containing product to be inhaled depends on release of fibers from asbestos-containing material. Friable material can release asbestos fibers. Friable means that the materials, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure. The fibrous or fluffy sprayed-on materials used for fireproofing, insulation, or sound proofing are considered to be friable, and they readily release airborne fibers if disturbed. Materials such as vinyl-asbestos floor tile or roofing felts are considered nonfriable and generally do not emit airborne fibers unless subjected to sanding or sawing operations. Some recent studies of asbestos release associated with routine maintenance of vinyl-asbestos floor-tiles indicates that it may be possible for airborne asbestos concentrations to result from the stripping, scrubbing, and buffing of these floors, especially using a dry process with abrasive pads. Asbestos-cement pipe or sheet can emit airborne fibers if the materials are cut or sawed, or if they are broken during demolition operations.

D. Permissible exposure: Exposure to airborne asbestos fibers may not exceed 0.2 fibers per cubic centimeter of air (0.2 f/cc) averaged over the 8–hour workday, and/or an excursion limit of 1.0 f/cc as averaged over a sampling period of 30 minutes.

II. Health Hazard Data

A. Asbestos can cause disabling respiratory disease and various types of cancers if the fibers are inhaled. Inhaling or ingesting fibers from contaminated clothing or skin can also result in these diseases. The symptoms of these diseases generally do not appear for 20 or more years after initial exposure.

B. Exposure to asbestos has been shown to cause lung cancer, mesothelioma, and cancer of the stomach and colon. Mesothelioma is a rare cancer of the thin membrane lining of the chest and abdomen. Symptoms of mesothelioma include shortness of breath, pain in the walls of the chest, and/or abdominal pain.

III. Respirators and Protective Clothing

A. Respirators: You are required to wear a respirator when performing tasks that result in asbestos exposure that exceeds the permissible exposure limit (PEL) of 0.2 f/cc of air. These conditions can occur while your employer is in the process of installing engineering controls to reduce asbestos exposure, or where engineering controls are not feasible to reduce asbestos exposure. Air-purifying respirators equipped with a high-efficiency particulate air (HEPA) filter can be used where airborne asbestos fiber concentrations do not exceed 2 f/cc; otherwise, air-supplied, positive-pressure, full facepiece respirators must be used. Disposable respirators or dust masks are not permitted to be used for asbestos work. For effective protection, respirators must fit your face and head snugly. Your employer is required to conduct fit tests when you are first assigned a respirator and every 6 months thereafter. Respirators should not be loosened or removed in work situations where their use is required.

B. Protective Clothing: You are required to wear protective clothing in work areas where asbestos fiber concentrations exceed the permissible exposure limit (PEL) of 0.2 f/cc to prevent contamination of the skin. Where protective clothing is required, your employer must provide you with clean garments. Unless you are working on a large asbestos removal or demolition project, your employer must also provide a change room and separate lockers for your street clothes and contaminated work clothes. If you are working on a large asbestos removal or demolition project, and where it is feasible to do so, your employer must provide a clean room, shower, and decontamination room contiguous to the work area. When leaving the work area, you must remove contaminated clothing before proceeding to the shower. If the shower is not adjacent to the work area, you must vacuum your clothing before proceeding to change the room and shower. To prevent inhaling fibers in contaminated change rooms and showers, leave your respirator on until you leave the shower and enter the clean change room.

IV. Disposal Procedures and Cleanup

A. Wastes that are generated by processes where asbestos is present include:

1. Empty asbestos shipping containers.

2. Process wastes such as cuttings, trimmings, or reject materials.

3. Housekeeping waste from sweeping or vacuuming.

4. Asbestos fireproofing or insulating material that is removed from buildings.

5. Asbestos-containing building products removed during building renovation or demolition.

6. Contaminated disposable protective clothing.

B. Empty shipping bags can be flattened under exhaust hoods and packed into airtight containers for disposal. Empty shipping drums are difficult to clean and should be sealed.

C. Vacuum bags or disposable paper filters should not be cleaned, but should be sprayed with a fine water mist and placed into a labeled waste container.

D. Process waste and housekeeping waste should be wetted with water or a mixture of water and surfactant prior to packaging in disposable containers.

E. Asbestos-containing material that is removed from buildings must be disposed of in leak-tight 6-mil thick plastic bags, plastic-lined cardboard containers, or plastic-lined metal containers. These wastes, which are removed while wet, should be sealed in containers before they dry out to minimize the release of asbestos fibers during handling.

V. Access to Information

A. Each year, your employer is required to inform you of the information contained in this standard and appendices for asbestos. In addition, your employer must instruct you in the proper work practices for handling asbestos-containing materials, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to asbestos. You or your representative has the right to observe employee measurements and to record the results obtained. Your employer is required to inform you of your exposure, and, if you are exposed above the permissible limit, he or she is required to inform you of the actions that are being taken to reduce your exposure to within the permissible limit.

C. Your employer is required to keep records of your exposures and medical examinations. These exposure records must be kept for at least thirty (30) years. Medical records must be kept for the period of your employment plus thirty (30) years.

D. Your employer is required to release your exposure and medical records to your

physician or designated representative upon your written request.

Appendix I to Subpart G—Medical Surveillance Guidelines for Asbestos—Non-Mandatory

I. Route of Entry

Inhalation, ingestion.

II. Toxicology

Clinical evidence of the adverse effects associated with exposure to asbestos is present in the form of several well-conducted epidemiological studies of occupationally exposed workers, family contacts of workers, and persons living near asbestos mines. These studies have shown a definite association between exposure to asbestos and an increased incidence of lung cancer, pleural and peritoneal mesothelioma, gastrointestinal cancer, and asbestosis. The latter is a disabling fibrotic lung disease that is caused only by exposure to asbestos. Exposure to asbestos has also been associated with an increased incidence of esophageal, kidney, laryngeal, pharyngeal, and buccal cavity cancers. As with other known chronic occupational diseases, diseases associated with asbestos generally appears about 20 years following the first occurrence of exposure: There are no known acute effects associated with exposure to asbestos.

Epidemiological studies indicate that the risk of lung cancer among exposed workers who smoke cigarettes is greatly increased over the risk of lung cancer among non-exposed smokers or exposed nonsmokers. These studies suggest that cessation of smoking will reduce the risk of lung cancer for a person exposed to asbestos but will not reduce it to the same level of risk as that existing for an exposed worker who has never smoked.

III. Signs and Symptoms of Exposure-Related Disease

The signs and symptoms of lung cancer or gastrointestinal cancer induced by exposure to asbestos is not unique, except that a chest X-ray of an exposed patient with lung cancer may show pleural plaques, pleural calcification, or pleural fibrosis. Symptoms characteristic of mesothelioma include shortness of breath, pain in the walls of the chest, or abdominal pain. Mesothelioma has a much longer latency period compared with lung cancer (40 years versus 15–20 years), and mesothelioma is therefore more likely to be found among workers who were first exposed to asbestos at an early age. Mesothelioma is always fatal.

Asbestosis is pulmonary fibrosis caused by the accumulation of asbestos fibers in the lungs. Symptoms include shortness of breath, coughing, fatigue, and vague feelings of sickness. When the fibrosis worsens, shortness of breath occurs even at rest. The diagnosis of asbestosis is based on a history of exposure to asbestos, the presence of characteristics radiologic changes, end-inspiratory crackles (rales), and other clinical features of fibrosing lung disease. Pleural plaques and thickening are observed on X-rays taken during the early stages of the disease. Asbestosis is often a progressive disease even in the absence of continued exposure, although this appears to be a highly individualized characteristic. In severe cases, death may be caused by respiratory or cardiac failure.

IV. Surveillance and Preventive Considerations

As noted above, exposure to asbestos has been linked to an increased risk of lung cancer, mesothelioma, gastrointestinal cancer, and asbestosis among occupationally exposed workers. Adequate screening tests to determine an employee's potential for developing serious chronic diseases, such as a cancer, from exposure to asbestos do not presently exist. However, some tests, particularly chest X-rays and pulmonary function tests, may indicate that an employee has been overexposed to asbestos increasing his or her risk of developing exposure related chronic diseases. It is important for the physician to become familiar with the operating conditions in which occupational exposure to asbestos is likely to occur. This is particularly important in evaluating medical and work histories and in conducting physical examinations. When an active employee has been identified as having been overexposed to asbestos measures taken by the employer to eliminate or mitigate further exposure should also lower the risk of serious long-term consequences.

The employer is required to institute a medical surveillance program for all employees who are or will be exposed to asbestos at or above the action level (0.1 fiber per cubic centimeter of air) for 30 or more days per year and for all employees who are assigned to wear a negative-pressure respirator. All examinations and procedures must be performed by or under the supervision of a licensed physician, at a reasonable time and place, and at no cost to the employee.

Although broad latitude is given to the physician in prescribing specific tests to be included in the medical surveillance program, EPA requires inclusion of the following elements in the routine examination:

(i) Medical and work histories with special emphasis directed to symptoms of the respiratory system, cardiovascular system, and digestive tract.

(ii) Completion of the respiratory disease questionnaire contained in Appendix D.

(iii) A physical examination including a chest roentgenogram and pulmonary function test that includes measurement of the employee's forced vital capacity (FVC) and forced expiratory volume at one second (FEV_1).

(iv) Any laboratory or other test that the examining physician deems by sound medical practice to be necessary.

The employer is required to make the prescribed tests available at least annually to those employees covered; more often than specified if recommended by the examining physician; and upon termination of employment.

The employer is required to provide the physician with the following information: A copy of this standard and appendices; a description of the employee's duties as they relate to asbestos exposure; the employee's representative level of exposure to asbestos a description of any personal protective and respiratory equipment used; and information from previous medical examinations of the affected employee that is not otherwise available to the physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment, if required.

The employer is required to obtain a written opinion from the examining physician containing the results of the medical examination; the physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of exposure-related disease; any recommended limitations on the employee or on the use of personal protective equipment; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions related to asbestos exposure that require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to exposure to asbestos and a copy of the opinion must be provided to the affected employee.

Appendix J to Subpart G—Smoking Cessation Program Information for Asbestos—Non-Mandatory

The following organizations provide smoking cessation information.

1. The National Cancer Institute operates a toll-free Cancer Information Service (CIS) with trained personnel to help you. Call 1–800–4–CANCER* to reach the CIS office serving your area, or write: Office of Cancer Communications, National Cancer Institute, National Institutes of Health, Building 31 Room 10A18, Bethesda, Maryland 20892.

2. American Cancer Society, 1599 Clifton Rd., N.E., Atlanta, Georgia 30329–4251, 1–800–ACS–2345 (Cancer Response System), or local Atlanta area 816–7800.

The American Cancer Society (ACS) is a voluntary organization composed of 58 divisions and 3,100 local units. Through "The Great American Smokeout" in November, the annual Cancer Crusade in April, and numerous educational materials, ACS helps people learn about the health hazards of smoking and become successful ex-smokers.

3. American Heart Association, 7320 Greenville Avenue, Dallas, Texas 75231, (214) 373–6300

The American Heart Association (AHA) is a voluntary organization with 130,000 members (physicians, scientists, and laypersons) in 55 State and regional groups. AHA produces a variety of publications and audiovisual materials about the effects of smoking on the heart. AHA also has developed a guidebook for incorporating a weight-control component into smoking cessation programs.

4. American Lung Association, 1740 Broadway, New York, New York 10019, 1–800–LUNG–USA

A voluntary organization of 7,500 members (physicians, nurses, and laypersons), the American Lung Association (ALA) conducts numerous public information programs about the health effects of smoking. ALA has 59 State and 85 local units. The organization actively supports legislation and information campaigns for non-smokers' rights and provides help for smokers who want to quit, for example, through "Freedom From Smoking," a self-help smoking cessation program.

5. Office on Smoking and Health, U.S. Department of Health and Human Services, 4770 Buford Highway, N.E, 1 Mail Stop K-50, Atlanta, Georgia 30341, (404) 488–5705

The Office on Smoking and Health (OSH) is the Department of Health and Human Services' lead agency in smoking control. OSH has sponsored distribution of publications on smoking-related topics, such as free flyers on relapse after initial quitting, helping a friend or family member quit smoking, the health hazards of smoking, and the effects of parental smoking on teenagers.

*In Hawaii, on Oahu call 524–1235 (call collect from neighboring islands).

Spanish-speaking staff members are available during daytime hours to callers from the following areas: California, Florida, Georgia, Illinois, New Jersey (area code 201), New York, and Texas. Consult your local telephone directory for listings of local chapters.

Appendix K to Subpart G—Work Practices and Engineering Controls for Automotive Brake Repair Operations—Non-Mandatory

This appendix is intended as guidance for employers of State and local government workers engaged in automotive brake and clutch repair operations who wish to reduce their employees' asbestos exposures during repair operations to levels below the standard's action level (0.1 f/cc). EPA believes that State and local government employers are likely to be able to reduce their employees' exposures to asbestos by employing the engineering and work practice controls described in Sections A and B of this appendix. Those employers who choose to use these controls and who achieve exposures below the action level will thus be able to avoid any burden that might be imposed by complying with such requirements as medical surveillance, recordkeeping, training, respiratory protection, and regulated areas, which are triggered when employee exposures exceed the action level or PEL.

Asbestos exposure in the automotive brake and clutch repair industry occurs primarily during the replacement of clutch plates and brake pads, shoes, and linings. Asbestos fibers may become airborne when an automotive mechanic removes the asbestos-containing residue that has been deposited as brakes and clutches wear. Employee exposures to asbestos occur during the cleaning of the brake drum or clutch housing.

Based on evidence in the OSHA rulemaking record (Exs. 84–74, 84–263, 90–148), EPA believes that employers engaged in brake repair operations who implement any of the work practices and engineering controls described in Sections A and B of this appendix may be able to reduce their employees' exposures to levels below the action level (0.1 fiber/cc) and/or excursion limit. These control methods and the relevant record evidence on these and other methods are described in the following sections.

A. Enclosed Cylinder/HEPA Vacuum System Method

The enclosed cylinder-vacuum system used in one of the facilities visited by representatives of the National Institute for Occupational Safety and Health (NIOSH) during a health hazard evaluation of brake repair facilities consists of three components:

(1) A wheel-shaped cylinder designed to cover and enclose the wheel assembly;

(2) A compressed-air hose and nozzle that fits into a port in the cylinder; and

(3) A HEPA-filtered vacuum used to evacuate airborne dust generated within the cylinder by the compressed air.

To operate the system, the brake assembly is enclosed in a cylinder that has viewing ports to provide visibility and cotton sleeves through which the mechanic can handle the brake assembly parts. The cylinder effectively isolates asbestos dust in the drum from the mechanic's breathing zone. The brake assembly isolation cylinder is manufactured in two sizes to fit brake drums in the 7-to-12-inch size range common to automobiles and light trucks and the 12-to-19-inch size range common to large commercial vehicles. The cylinder is equipped with built-in compressed-air guns and a connection for a vacuum cleaner equipped with a High Efficiency Particulate Air (HEPA) filter. This type of filter is capable of removing all particles greater than 0.3 microns from the air. When the vacuum cleaner's filter is full, it must be replaced according to the manufacturer's instruction, and appropriate HEPA-filtered dual cartridge respirators should be worn during the process. The filter of the vacuum cleaner is assumed to be contaminated with asbestos fibers and should be handled carefully, wetted with a fine mist of water, placed immediately in a labelled plastic bag, and disposed of properly. When the cylinder is in place around the brake assembly and the HEPA vacuum is connected, compressed air is blown into the cylinder to loosen the residue from the brake assembly parts. The vacuum then evacuates the loosened material from within the cylinder, capturing the airborne material on the HEPA filter.

The HEPA vacuum system can be disconnected from the brake assembly isolation cylinder when the cylinder is not being used. The HEPA vacuum can then be used for clutch facing work, grinding, or other routine cleaning.

B. Compressed Air/Solvent System Method

A compressed-air hose fitted at the end with a bottle of solvent can be used to loosen the asbestos-containing residue and to capture the resulting airborne particles in the solvent mist. The mechanic should begin spraying the asbestos-contaminated parts with the solvent at a sufficient distance to ensure that the asbestos particles are not dislodged by the velocity of the solvent spray. After the asbestos particles are thoroughly wetted, the spray may be brought closer to the parts and the parts may be sprayed as necessary to remove grease and other material. The automotive parts sprayed with the mist are then wiped with a rag, which must then be disposed of appropriately. Rags should be placed in a labelled plastic bag or other container while they are still wet. This ensures that the asbestos fibers will not become airborne after the brake and clutch parts have been cleaned. (If cleanup rags are laundered rather than disposed of, they must be washed using methods appropriate for the laundering of asbestos-contaminated materials.)

EPA believes that a variant of this compressed-air/solvent mist process offers advantages over the compressed-air/solvent mist technique discussed above, both in terms of costs and employee protection. The variant involves the use of spray cans filled with any of several solvent cleaners commercially available from auto supply stores. Spray cans of solvent are inexpensive, readily available, and easy to use. These cans will also save time, because no solvent delivery system has to be asembled, i.e., no compressed-air hose/mister ensemble. EPA believes that a spray can will deliver solvent to the parts to be cleaned with considerably less force than the alternative compressed-air delivery system described above, and will thus generate fewer airborne asbestos fibers than the compressed-air method. EPA therefore believes that the exposure levels of automotive repair mechanics using the spray can/solvent mist process will be even lower than the exposures reported by NIOSH for the compressed-air/solvent mist system (0.08 f/cc).

C. Information on the Effectiveness of Various Control Measures

The amount of airborne asbestos generated during brake and clutch repair operations depends on the work practices and engineering controls used during the repair or removal activity. Data in the rulemaking record document the 8-hour time-weighted average (TWA_8) asbestos exposure levels associated with various methods of brake and clutch repair and removal.

NIOSH submitted a report to the OSHA rulemaking record entitled "Health Hazard Evaluation for Automotive Brake Repair." In addition, exhibits provided during the public comment period for OSHA rulemaking provided exposure data for comparing the airborne concentrations of asbestos generated by the use of various work practices during brake repair operations. These reports present exposure data for brake repair operations involving a variety of controls and work practices, including:

- Use of compressed air to blow out the brake drums;
- Use of a brush, without a wetting agent, to remove the asbestos-containing residue;
- Use of a brush dipped in water or a solvent to remove the asbestos-containing residue;
- Use of an enclosed vacuum cleaning system to capture the asbestos-containing residue; and
- Use of a solvent mixture applied with compressed air to remove the residue.

Prohibited Methods

The use of compressed air to blow the asbestos-containing residue off the surface of the brake drum removes the residue effectively but simultaneously produces an airborne cloud of asbestos fibers. According to NIOSH, the peak exposures of mechanics using this technique were as high as 15 fibers/cc, and 8-hour TWA exposures ranged from 0.03 to 0.19 f/cc.

Dr. William J. Nicholson of the Mount Sinai School of Medicine in public comments submitted to the OSHA asbestos docket (Ex. 74–84) cited data from Knight and Hickish (1970) that indicated that the concentration of asbestos ranged from 0.84 to 5.35 f/cc over a 60–minute sampling period when compressed air was being used to blow out the asbestos-containing residue from the brake drum. In the same study, a peak concentration of 87 f/cc was measured for a few seconds during brake cleaning performed with compressed air. Rohl et al. (1976), in comments submitted to the OSHA docket (Ex. 90–148), measured area concentrations (of unspecified duration) within 3–5 feet of operations involving the cleaning of brakes with compressed air and obtained readings ranging from 6.6 to 29.8 f/cc. Because of the high exposure levels that result from cleaning brake and clutch parts using compressed air, EPA prohibits this practice in the EPA WPR.

Ineffective Methods

When dry brushing was used to remove the asbestos-containing residue from the brake drums and wheel assemblies, peak exposures measured by NIOSH ranged from 0.61 to 0.81 f/cc, while 8-hour TWA levels were at the standard's permissible exposure limit (PEL) of 0.2 f/cc (Ex. 84–263). Rohl and his colleagues (Ex. 90–148) collected area samples 1–3 feet from a brake cleaning operation being performed with a dry brush, and measured concentrations ranging from 1.3 to 3.6 f/cc; however, sampling times and TWA concentrations were not presented in the Rohl et al. study.

When a brush wetted with water, gasoline, or Stoddart solvent was used to clean the asbestos-containing residue from the affected parts, exposure levels (8-hour TWAs) measured by NIOSH also exceeded the new 0.2 f/cc PEL, and peak exposures ranged as high as 2.62 f/cc (OSHA docket Ex. 84–263).

Preferred Methods

Use of an engineering control system involving a cylinder that completely encloses the brake shoe assembly and a High Efficiency Particulate Air (HEPA) filter-equipped vacuum produced 8-hour TWA employee exposures of 0.01 f/cc and peak exposures ranging from nondetectable to 0.07 f/cc (OSHA docket Ex. 84–263). (Because this system achieved exposure levels below the standard's action level, it is described in detail above.) Data collected by the Mount Sinai Medical Center (OSHA docket Ex. 90–148), showed that for two of three operations sampled, the exposure of mechanics to airborne asbestos fibers was nondetectable. For the third operator sampled by Mt. Sinai researchers, the exposure was 0.5 f/cc, which the authors attributed to asbestos that had contaminated the operator's clothing in the course of previous brake repair operations performed without the enclosed cylinder/vacuum system.

Some automotive repair facilities use a compressed-air hose to apply a solvent mist to remove the asbestos-containing residue from the brake drums before repair. The NIOSH data (OSHA docket Ex. 84–263) indicated that mechanics employing this method experienced exposures (8-hour TWAs) of 0.8 f/cc, with peaks of 0.25 to 0.68 f/cc. This technique, and a variant of it that EPA believes is both less costly and more effective in reducing employee exposures, is described in greater detail above in Sections A and B.

D. Summary

In conclusion, EPA believes that it is likely that employers of State and local government workers engaged in brake and clutch repair operations will be able to avail themselves of the action level trigger built into the revised standard if they conscientiously employ one of the three control methods described above: the enclosed cylinder/HEPA vacuum system, the compressed air/solvent method, or the spray can/solvent mist system.

[FR Doc. 94–26802 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–F

federal register

Tuesday
November 1, 1994

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 524
Classification and Program Review; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP-1026-P]

RIN 1120-AA30

Classification and Program Review

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its regulations on Classification and Program Review to require program reviews for an inmate at least once every 90 days when an inmate is within twelve months of the projected release date. Current regulations require program reviews at least once every 90 days when an inmate is within two years of the projected release date. This amendment is intended to allow for the more efficient use of Bureau staff.

DATES: Comments due by January 3, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on Classification and Program Review. A final rule on this subject was published in the **Federal Register** on July 3, 1991 (56 FR 30676) and was amended August 5, 1992 (57 FR 34662).

Program reviews provide the inmate with an opportunity to discuss staff's assessment of the inmate's performance in the institution's programming. Current regulations in 28 CFR 524.12(b) require a program review for an inmate every 180 days until the inmate is within two years of the projected release date, when a program review is required at least once every ninety days. In the interest of better using staff resources, the Bureau is proposing to continue the conducting of program reviews every 180 days until the inmate is within twelve months of the projected release date.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 524

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), it is proposed to amend part 524 in subchapter B of 28 CFR, chapter V as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521-3528, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; Title V, Pub. L. 91-452, 84 Stat. 933 (18 U.S.C. Chapter 223); 28 CFR 0.95-0.99.

2. In § 524.12, paragraph (b) is revised to read as follows:

§ 524.12 Initial classification and program reviews.

* * * * *

(b) Staff shall conduct a program review for each inmate at least once every 180 days. When an inmate is within twelve months of the projected release date, a program review shall be conducted at least once every 90 days.

* * * * *

[FR Doc. 94-27046 Filed 10-31-94; 8:45 am]

BILLING CODE 4410-05-P

federal register

Tuesday
November 1, 1994

Part VI

The President

Notice of October 31—Continuation of Emergency With Respect to Iraq

Federal Register
Vol. 59, No. 210
Tuesday, November 1, 1994

Presidential Documents

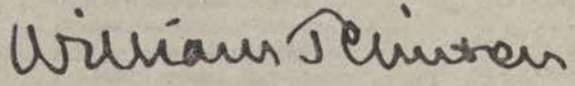
Title 3—

The President

Notice of October 31, 1994

Continuation of Iran Emergency

On November 14, 1979, by Executive Order No. 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the **Federal Register**. The most recent notice appeared in the **Federal Register** on November 2, 1993. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1994. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
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[FR Doc. 94-27277
Filed 10-31-94; 12:03 pm]
Billing code 4810-31-P

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Vol. 59, No. 210

Tuesday, November 1, 1994

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54513–54786.....1

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2970/P.L. 103–424

To reauthorize the Office of Special Counsel, and for other purposes. (Oct. 29, 1994; 108 Stat. 4361; 8 pages)

Last List October 28, 1994

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 1994

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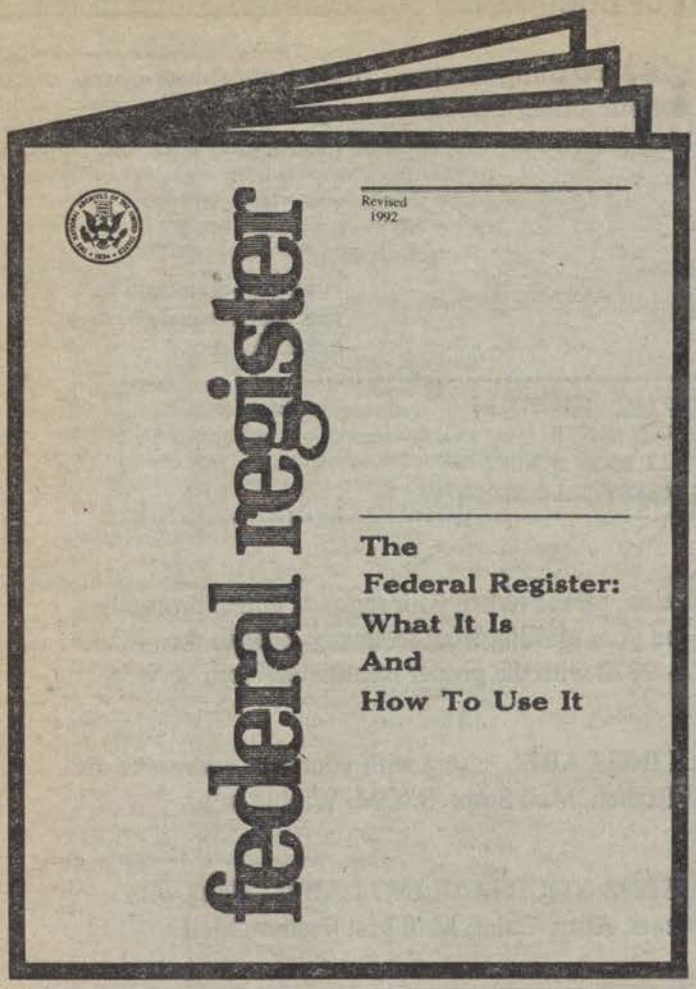

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